

Before : M. K. Agnihotri, J.

JAGDEV KRISHAN NANDA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 1990 of 1989.

11th August, 1989.

Constitution of India, 1950—Arts. 14, 16, 226, 227, 309, 313—Haryana Government's decision to accept and implement recommendations of Fourth Pay Commission—Benefit of pension to employees retiring after 31st March, 1985—Such artificial classification—Legality of—Payment of arrears in form of National Savings Certificates without any legislation—Whether sustainable.

Held, that the stand taken by the respondent-State of Haryana is wholly untenable in law. The very object of setting up of the Fourth Pay Commission by the Government of India was to improve and ameliorate the conditions of service of the employees in view of the prevailing inflation. In fact the only logical basis should be to compensate the decline in the purchasing power of money and to help the employees and the pensioners to maintain a respectable standard of living in harmony with their status etc. Obviously, the intention was not to exclude those employees who had retired from service either before the setting up of the Pay Commission or thereafter. Moreover, there is no reasonable nexus between the object to be achieved and the artificial classification sought to be introduced by the State Government on the basis of the date of retirement.

(Para 7)

Held, that so far as the attack on the rider to the aforesaid letter is concerned there is no difficulty in striking down the same. It has been settled by the Supreme Court that service rules of the nature of pension, gratuity, salary, wages, etc. framed either under Article 309 or under Government of India Act, 1935 or Government of India Act, 1919 cannot be amended or modified by mere executive orders. They form part of conditions of service of the employees. It is the mandate of Punjab Civil Services Rules framed under the Government of India Act, 1919 that salary and wages have to be paid in cash. The provision is analogous to the provisions in section 6 of the Payment of Wages Act, 1936 according to which "all wages shall be paid in current coin or currency notes or in both". If this provision had to be modified or interfered with in order to make payment in the form of long-term deposits or National Savings Certificates, then either an Act of State Legislature should have been enacted or a statutory rule should have been framed under Article 309 of the Constitution. Mere executive order is not enough to achieve the object which has the effect of amending the statutory service rules.

(Para 8)

Writ petition under Articles 226/227 of the Constitution of India praying that the records of the case be sent for and after perusal of the same:—

- (i) *issue a writ directing the respondents to grant liberalised pensionary benefits to the petitioners on the basis of the recommendations of the Fourth Pay Commission and on the Pattern of Central Government;*
- (ii) *direct the respondents to make payment of arrears of dearness relief etc. In cash instead of long term deposits alongwith 15 per cent interest on the arrears from due date till payment;*
- (iii) *issue a writ of certiorari declaring the action of the respondents in denying the benefits of liberalised pension to pre 31st March, 1985 retirees as arbitrary and violative of Article 14 of the Constitution of India;*
- (iv) *issue any other appropriate order or direction as deemed fit in the circumstances of the case;*
- (v) *filing of the certified copies of the Annexures be exempted.*
- (vi) *costs of the writ petition be also awarded to the petitioners.*

H. S. Gill, Advocate, for the Petitioners.

S. C. Mohunta, A.G. Haryana with B. S. Pawar, D.A.G. Haryana, for the Respondents.

JUDGMENT

M. R. Agnihotri, J. (Oral)

(1) This judgment shall dispose of Civil Writ Petitions Nos. 1867, 1990, 2210, 2655, 3885, 4605, 4747, 4748, 4836 and 6517 of 1989 as common questions of fact and law are involved in all these cases. For reference, factual position has been called from C.W.P. No. 1990 of 1989.

(2) The Government of India set up a Pay Commission Popularly known as "Fourth Pay Commission" in the year 1983, for the purposes of examining the prevalent structure of emoluments and conditions of service of the employees of the Central Government; as also for examining with a view to having a proper pension structure for the pensioners, both past and future. This Pay Commission submitted its report to the Government of India and the

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recommendations of the Commission were duly implemented in respect of the serving employees of the Government of India as well as the pensioners i.e. old as well as new. So far as the employees and the pensioners of State of Haryana are concerned, State Government decided to accept and implement the recommendations of the Fourth Pay Commission, and in pursuance of that decision, the State Government revised the pay scales of its employees by issuing a notification dated 29th April, 1987. By virtue of this notification, the pay scales were revised with effect from 1st January, 1986. As a result of the Pay revision the employees retiring after 1st January, 1986 became entitled to the benefit of pay and pension at an enhanced rate and the grievance of the employees to that extent stood redressed.

(3) However, the rationalisation of the pension structure by consolidating the pension after adding together the existing pension, existing dearness relief and the additional benefits accruing from the decision taken by Government of India with regard to their own employees, as contained in their policy letter dated 16th April, 1987 (Annexure P. 1) remained to be implemented in the case of the employees of the Haryana Government. Accordingly, on 3rd November, 1988, the State of Haryana also issued orders regarding the liberalisation of pensionary benefits in the case of employees of Haryana State on the recommendations of the Fourth Pay Commission as implemented by the Government of India. While doing so, Haryana Government employees who had retired with effect from 31st March, 1985 were granted pension on the Central Government pattern while no such benefit towards the pension was granted to those employees who had retired before 31st March, 1985. The policy letter issued by the State Government on 3rd November, 1988 which is the subject matter of consideration in these writ petitions is annexed as Annexure P. 2. Further, though as a result of the upward revision and liberalisation of pensionary benefits, arrears of salary, pension, death-cum-retirement gratuity, etc. were ordered to be given to the employees, yet a rider was added towards the end of the letter dated 3rd November, 1988 (Annexure P. 2) to the following effect:—

“Arrears of all kinds becoming payable on the basis of implementation of the order upto 30th June, 1988, may be paid in the form of long term deposits in National Savings Certificates/National Savings Schemes.”

It is against this action of the respondents that the petitioners who are pensioners of the State of Haryana are feeling aggrieved and have approached this Court for the grant of following reliefs:—

(4) Firstly, all the employees should be treated at par and the grant of benefit towards pension to all of them whether retiring before or after 31st March, 1985, should be in an identical and uniform manner, without there being any discrimination on the basis of different dates of retirement. In other words, the benefit of the report of the "Fourth Pay Commission", which has already been accepted and implemented by the State of Haryana, should be granted in the same manner to all the employees retiring before 31st March, 1985, as has been done in the case of those retiring after 31st March, 1985. Any artificial classification on the basis of date, according to the petitioners, would be violative of Articles 14 and 16 of the Constitution of India. In support of their contention, strong reliance has been placed on well-known authority of the Supreme Court in *D. S. Nakara's* case reported as *D. S. Nakara and others v. Union of India* (1), wherein almost in similar situation, artificial classification on the basis of dates of retirement was struck down by the Hon'ble Supreme Court.

(5) Second relief sought is the quashing of the rider added to the letter dated 3rd November, 1988 (Annexure P. 2) by which the arrears becoming payable on the basis of implementation have been ordered to be paid in the form of long term deposits like National Savings Certificates and National Savings Schemes, etc. i.e. not in cash and in lump-sum immediately.

(6) In reply to the Writ Petition, separate written statements have been filed by the State of Haryana as also by the Accountant General, Haryana. The stand of Accountant General, Haryana, is simple i.e. the orders for revision of pension with effect from 31st March, 1985 in respect of Haryana Government pensioners are still awaited from the State Government and he is only to act in accordance with the instructions received from the State Government from time to time. So far as the State of Haryana is concerned, the plea made by the State Government is 'that the question of further granting of additional relief to these pensioners who retired earlier than 31st March, 1985 is under the consideration of the Government.' Regarding the second contention, the stand taken

(1) A.I.R. 1983 S.C. 130.

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by the respondents is "that the orders of the Government for payment of arrears in the form of NSC/NSS were passed in the light of the tight financial position of the State and also the sincerity of the State Government to provide additional relief to its pensioners. It is denied that this action of the State Government is arbitrary and unjust."

(7) Having heard the learned counsel for the parties and after examining their pleadings, I am of the considered view that the stand taken by the respondent-State of Haryana is wholly untenable in law. The very object of setting up of the Fourth Pay Commission by the Government of India was to improve and ameliorate the conditions of service of the employees in view of the prevailing inflation. In fact the only logical basis should be to compensate the decline in the purchasing power of money and to help the employees and the pensioners to maintain a respectable standard of living in harmony with their status etc. Obviously, the intention was not to exclude those employees who had retired from service either before the setting up of the Pay Commission or thereafter. Moreover, there is no reasonable nexus between the object to be achieved and the artificial classification sought to be introduced by the State Government on the basis of the date of retirement. In fact, it was precisely in such a situation that Supreme Court struck down the invidious discrimination sought to be introduced by the Government of India on the basis of dates of retirement. The hollowness of the stand taken by the State of Haryana is also evident from the half hearted plea taken in para 7 of the reply that the matter was still under consideration of the Government. Even the learned Advocate General, Haryana at the time of the hearing of the cases stated that the discrimination would be removed within a period of four months. Keeping in view the delay already occurred in implementation of the recommendations of the Fourth Pay Commission and the compelling reasons for which the retirees are to be compensated by equating them in the matter of grant of pensionary benefits, it is not necessary to wait for a period of four months by leaving the matter once again to the consideration of the State Government. The State Government may, however, utilise this time for working out the details in each individual case and for refixing the amount of pension and other retiring benefits like gratuity etc. So that all the benefits of this Pay fixation are actually made available to the petitioners, Positively within a period of four months.

(8) So far as the attack on the rider to the aforesaid letter is concerned there is no difficulty in striking down the same. Service conditions of the employees of the State of Haryana and of those who have been allocated to it with effect from 1st November, 1966, are governed by the statutory service rules. To start with, Civil Service Regulations were framed for the province of united Punjab under section 96-B of the Government of India Act, 1919. They were continued in force under section 266 of the Government of India Act, 1935, and after coming into force of the Constitution, a specific provision was made in the Constitution in Article 313, for continuing their statutory force. It has been settled by the Supreme Court that service rules of the nature of pension, gratuity, salary, wages, etc. framed either under Article 309 or under Government of India Act, 1935 or Government of India act, 1919 cannot be amended or modified by mere executive orders. They form part of conditions of service of the employees. It is the mandate of Punjab Civil Services Rules framed under the Government of India Act, 1919 that salary and wages have to be paid in cash. The provision is analogous to the provisions in section 6 of the Payment of Wages Act, 1936 according to which "all wages shall be paid in current coin or currency notes or in both". If this provision had to be modified or interfered with in order to make payment in the form of longterm deposits or National Savings Certificates, then either an Act of State Legislature should have been enacted or a statutory rule should have been framed under Article 309 of the Constitution. Mere executive order is not enough to achieve the object which has the effect of amending the statutory service rules.

(9) In fact a similar situation arose in 1962 in the State of Punjab when it was decided by the State Government to make payment of bonus beyond a certain amount by making investments in longterm savings schemes. For achieving that object the State of Punjab had to enact legislation and the Payment of Wages Act, 1936 was amended by the Payment of Wages (Punjab Amendment) Act, 1962 (Punjab Act No. 15 of 1962). By virtue of section 2 of the Amending Act, section 6 of the Payment of Wages Act, 1936 was amended in its application to the State of Punjab and the following section was substituted:—

"6. Wages to be paid in current coin or currency notes.—All wages shall be paid in current coin or currency notes or in both.

Provided that where the amount of any bonus payable to an employed person exceeds an amount of one hundred rupees for the year to which the bonus relates, fifty per centum of the amount of bonus in excess of one hundred rupees shall be *paid or invested* in the manner prescribed.

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It is obvious that short in this legislation the object could not be achieved and the provision made in the Statute i.e. Payment of Wages Act could not be modified by mere executive orders. It would also be relevant to note that even the Amending Act of Punjab was repealed soon thereafter with effect from 1st April, 1963, by Punjab Act 2 of 1964. On this parity of reasoning, since the Punjab Civil Services Rules which are statutory in nature and provide for the payment of pension and other benefits in cash, an executive order in the form of Annexure P. 2 cannot modify the manner of payment. Needless to add that the Supreme Court in the cases of *Sant Ram Sharma v. State of Rajasthan and others* (2), *Rajendra Narain Singh and others v. State of Bihar and others* (3), *S. L. Sachdev and others v. Union of India and others* (4) and *P. D. Aggarwal and others v. State of U.P. and others* (5), has held that provisions contained in the statutory rules cannot be amended by executive orders. As such, the rider contained in the last para of the letter dated 3rd November, 1988 is on the face of it illegal.

(10) Resultantly, these petitions are allowed and by issuing a writ of *mandamus* the respondents are directed to grant the petitioners and all other employees similarly situated, the following reliefs:—

- (i) the pensionary benefits on the basis of the implementation of the recommendations of the Pay Commission, as accepted by the State Government shall be applicable and available equally to all those Government servants also who have retired before 31st March, 1985, in the same manner and according to same rates as these benefits are available to the employees retiring thereafter; and
- (ii) the benefits as a result of the implementation of the decision contained in letter dated 3rd November, 1988, shall be worked out and paid to the petitioners and other employees similarly situated in cash within a period of four months from today.

Petitioners shall also be entitled to costs of the petitions which are quantified at Rs. 500 in cash case.

P.C.G.

- (2) A.I.R. 1967 S.C. 1910.
- (3) A.I.R. 1980 S.C. 1246.
- (4) A.I.R. 1981 S.C. 411.
- (5) A.I.R. 1987 S.C. 1676.