

Before Santanter Kumar & S.S. Saron, JJ

RATTAN CHAND & OTHERS—*Petitioners*

versus

BHAKRA BEAS MANAGEMENT BOARD
& ANOTHER—*Respondents*

C.W.P. No. 816 OF 2002

10th October, 2002

Constitution of India, 1950— Art. 226— Punjab Civil Services Rules, Part I, Vol. II, Chapter XI— R1.11.5— Punjab Govt. instructions dated 21st July, 1998— Commutation of civil pension— R1.11.5(1) entitles an employee to commute a portion of his pension for lumpsum payment— Calculation of lumpsum amount of commutation in accordance with Commutation Table prescribed under R1.11.5(2)— Petitioners seeking enhancement of the value of commuted portion of pension by applying a multiplier of 15 years on the basis of instructions dated 21st July, 1998— Instructions entitle the employees benefit of increase in commutation of pension equivalent to 40% of their pension instead of 1/3rd of the pension—No relevance of multiplier of 12 or 15 in the calculation of commuted portion of pension— No change in the Commutation Table—Restoration of commuted portion of pension after a period of 15 years justified—High Court has no jurisdiction to lay down a policy with regard to the pensioners—Petitioners not entitled to any relief in view of instructions dated 21st July, 1998— Petition liable to be dismissed.

Held, that the relief that has been granted in terms of the Punjab Government letter dated 21st July, 1998 is that the employees who retire on or after 1st January, 1996 would be permitted to commute pension equivalent to 40% of their basic pension. However, the commuted portion of pension shall be eligible for restoration after 15 years from the actual date of commutation. The same nowhere provides that the multiplier of 15 would apply to the factor of their purchase value.

(Para 13)

Further held, that earlier there were to be two sets of age groups i.e. those who get the pension commuted between 59 years and 65 years and those who get it commuted between 65 years and 70 years. There was a different time frame for the restoration of pension. Now there is a fixed period of 15 years from the date of commutation irrespective of the age when the pension has been commuted. However, it has been specifically mentioned in the instructions dated 21st July, 1998 that the table in Rule 11.5(2) of the Rules would remain unchanged. This would mean that the question of applying multiplier of 15 does not arise. Therefore, the contention that instead of multiplier of 12 the multiplier of 15 should be applied is not sustainable and is not provided for either under the Rules or in any of the instructions on which reliance is placed.

(Paras 17 & 21)

Further held, that the case of Harinder Pal Singh Sidhu *versus* State of Punjab and others, decided on 17th February, 2000 by the Hon'ble Lok Adalat, which is based on the concession given by the Advocate, General Punjab would not, in any case, bind the Board.

(Para 28)

Further held, that it is up to the State Government to revise the commutation of pension as per its wisdom and in the interest of the pensioners. It is not for this Court to lay down the policy with regard to the pensioners. This is best left to the Executive Government and may be got determined by an Expert Body like Pay Commission. They would be the best judge to evaluate the situation as regards the commutation of pensions.

(Para 34)

Madan Mohan, Advocate *for the Petitioners*.

D. S. Nehra, Sr. Advocate with Arun Nehra, Advocate.

Sanjeev Goyal, Advocate, *for the respondents*.

JUDGMENT

S. S. SARON, J.

(1) This order will dispose of Civil Writ Petitions No. 816 and 833 of 2002 as the claims and the questions of law involved are the same.

(2) The brief facts are that the petitioners in the respective petitions are employees of the respondent — Bhakra Beas Management Board (hereinafter referred to as the Board) and have retired from service on attaining the age of superannuation on different dates but after 1st January, 1996. The petitioners were allowed commutation of pension on the basis of unamended Rules. The necessary particulars of the petitioners are appended as Annexure P-1 to the respective petitions. The Board adopted the instructions as issued by the State of Punjab rationalizing Pension/family pension in respect of the pensioners. The Instructions dated 16th July, 1998 relating to the implementation of the recommendations of the Fourth Pay Commission regarding pension and other retirement benefits and the instructions dated 21st July, 1998 relating to the commutation of pension in respect of employees retired on or after 1st January, 1996 issued by the Punjab Government were approved by the Board,—*vide* letter dated 14th October, 1998 (Annexure P-2). The grievance of the petitioners is that according to the approval dated 14th October, 1998 (Annexure P-2) all the petitioners are entitled to enhancement of commuted value of pensions by applying the multiplier of 15. However, the petitioners have been sanctioned commutation by applying the multiplier of 12. In this manner the petitioners allege that they had been paid lesser amounts, however, at the same time the period of restoration of pension has been enlarged. It is claimed that the instructions of the Punjab State Government dated 21st July, 1998, which have been adopted by the Board, relating to commutation of pension in respect of employees retired on or after 1st January, 1996 are binding on the Board.

(3) In C.W.P. No. 816 of 2002. It is the case of the petitioners that they are entitled to 40% basic pension multiplied by 10.46 and further multiplied by 15 in case of petitioners No. 1, 2, 3, 15, 16 and 17 and 40% basic pension multiplied by 9.81 and further multiplied by 15 in case of petitioners at Sr. No. 4 to 14 and restoration after 15 years from the initial date of commutation and release of arrears so accrued.

(4) In C.W.P. No. 833 of 2002, the claim is for grant of pension equivalent to 40% of basic pension by applying the multiplier of 15 and restoration after 15 years from the initial date of commutation and release of the arrears so accrued along with interest at the rate

of 18% per annum in both cases. It is stated that the multiplier of 12 has wrongly been applied while calculating the commuted portion of pension and in this way the petitioners have been paid less amount of commutation value of their pension.

(5) The petitioners thus primarily claim that they are entitled to commutation of pension at 40% of the basic pension multiplied by 15 years and release of the balance amount alongwith interest as ordered by the Hon'ble Lok Adalat in the case of Harinder Pal Singh Sidhu *versus* State of Punjab C.W.P. No. 16531 of 1998. The respondents Board failed to accede to the request of the petitioners and accordingly the present writ petition.

(6) On notice, the respondent Board has put in appearance and has filed its written statement. In the written statement filed by the Board the stand taken is that in terms of the instructions dated 21st July, 1998 issued by the Punjab Government, the position is that prior to 1st December, 1981, one third portion of the pension was allowed to be commuted and the pension was not allowed to be restored at any later stage. However,—*vide* Punjab Government letter dated 8th December, 1981 (Annexure R-1), it was decided that where a pensioner commutes a part of his pension and received lump-sum in lieu thereof, he may be allowed restoration of surrendered portion of pension after he has attained the age of 70 years. Thereafter, the Punjab Government issued letter dated 19th May, 1983 (Annexure R-2) in pursuance of which it was clarified that restoration of commuted portion of pension would be allowed after attaining age of 70 years, only in case where the pension was commuted during the first year of retirement. In other cases, that is, where the pension is commuted in subsequent years, the pension may be restored after the commuted value is repaid to the Government by way of reduced pension. Lastly, in terms of Government letter dated 21st July, 1998 (Annexure R-3), which has been adopted by the Board,—*vide* letter dated 14.10.1998 (Annexure P-2), it has been decided that employees who retired on or after 1st January, 1996 would be permitted to commute the portion of pension equivalent to 40% of the basic pension and shall be eligible for restoration after 15 years from the actual date of commutation. It has been submitted that the table referred to in Rule 11.5(2) of the Punjab Civil Service Rules Volume II Part I (Rules for short) shall however, remain unchanged. Consequently, it is prayed that the writ petition be dismissed.

(7) We have heard the learned counsel for the parties and have given our thoughtful consideration to their respective contentions.

(8) The primary contention urged on behalf of the petitioner is that the order of the Hon'ble Lok Adalat passed in the case of **Harinder Pal Singh Sidhu versus State of Punjab and others** C.W.P. No. 16531 of 1998 decided on 17th February, 2000 (Annexure P-3) is binding between the parties and the petitioners in the respective petitions are entitled to the same relief as similarly situated retirees of the Punjab Government have been given. It is submitted that the said writ petition was contested by the respondent State and was decided by the Chairman, Lok Adalat,—*vide* order dated 17th February, 2000. Copy of which has been placed on record as Annexure P-3. On the strength of the judgment of the Lok Adalat, the petitioners approached the respective authorities for according the same treatment as the petitioners in the afore-said writ petition. The copies of representations are attached as Annexures P-4 and P-5. It is also stated that the order dated 17th February, 2000 of the Permanent Lok Adalat has attained finality. The State of Punjab filed Civil Writ Petition No. 7988 of 2000 titled **State of Punjab versus Harinder Pal Singh Sidhu**, in this Court assailing the order dated 17th February, 2000. During the course of hearing of the said petition, the learned Advocate General, appearing for the respondent State fairly conceded that the terms in which award has been made by the Lok Adalat are quite reasonable and the Government would accept the same and comply with the award. Accordingly he prayed for permission to withdraw the writ petition. Upon the statement of the learned Advocate General, the writ petition was dismissed as withdrawn on 2nd August, 2000 (Annexure P-6). The respondent State, however, thereafter filed Review Application No. 95 of 2001 in the said writ petition, which was dismissed by this Court on 2nd May, 2001 (Annexure P-7). Against the said order, the State of Punjab filed S.L.P. (Civil) No. 14595-96 of 2001 in the Hon'ble Supreme Court of India, which was dismissed on 13th August, 2001. It is also submitted that a similar decision has been rendered by the Hon'ble Lok Adalat in **Darshan Lal Jaggi & Ors. versus State of Punjab** C.W.P. No. 1611 of 2001 decided on 10th October, 2001. Therefore, the petitioners also claim that multiplier of 15 should be applied to their commuted pension.

(9) As against this, it is contended by the respondents that,—*vide* Punjab Government instructions dated 21st July, 1998 (Annexure R-3), which has been adopted by the Board, it has been decided that employees retiring on or after 1st January, 1996 would be permitted to commute the portion of pension equivalent to 40% and shall be eligible for restoration after 15 years from the actual date of commutation. However, it is contended that the said instructions dated 21st July, 1998 nowhere provides for applying a multiplier of 15. The table referred to in Rule 11.52 of the Punjab Civil Services Rules Vol. II, Part I is to remain unchanged. Besides, strong reliance has been placed on the judgment of this Court in the case of **T. R. Singla and others versus State of Punjab** C.W.P. No. 6658 of 2001 decided on 29th August, 2002.

(10) The basic point which requires consideration by this Court is whether the petitioners are entitled for enhancing the commuted value of pension by applying multiplier of 15 on the basis of instructions dated 21st July, 1998 (Annexure R-3) adopted by the respondent Board,—*vide* letter dated 14th October, 1998 (Annexure P-2) and on the basis of the order dated 17th February, 2000 (Annexure P-3) passed by the Hon'ble Lok Adalat in **Harinder Pal Singh Sidhu's** case C.W.P. No. 16531 of 2000 against which Civil Writ Petition No. 7988 of 2000 has also been dismissed on 2nd August, 2000. Besides, the Review Application No. 95 of 2001 has also been dismissed on 2nd May, 2001 (Annexure P-6) and the Special Leave Petition has also been dismissed on 13th August, 2001.

In order to appreciate the contentions, the instructions, dated 21st July, 1998 (Annexure R-3), which is sought to be enforced by the petitioners, may be referred to. The same read as under :—

No. 1/7/98, IFP III/8830
GOVERNMENT OF PUNJAB
DEPARTMENT OF FINANCE
(Finance Personnel Branch III)
Dated, Chandigarh the 21st July, 1998.

To

All the Heads of Departments,
Commissioners of Divisions,
Registrar, High Court of Punjab and Haryana,

District and Session Judges and
Deputy Commissioners in the State.

Subject : Commutation of pension in respect of employees
retired on or after 1st January, 1996.

Sir,

I am directed to invite a reference to the subject cited above to para 8.1 of letter No. 1/7/98-IFP III/8709, dated 16th July, 1998 and to say that after careful consideration of the recommendations of the Fourth Pay Commission in respect of pensionary benefits to the pensioners and family pensioners, the Governor of Punjab is pleased to decide that employees retiring on or after 1st January, 1996 will now be permitted to commute pension equivalent to 40% of their basic pension. Commuted portion of pension shall be eligible for restoration after 15 years from the actual date of commutation. .

2. The provisions of Chapter 11 of Punjab Civil Services Rules, Volume II shall be deemed to have been amended to the extent as stated above and necessary notification shall be issued in due course. Other provisions and the Table referred to in Rule 11.5 (2) of the said rules, however, remain unchanged.

3. The receipt of this letter may please be acknowledged.

Yours faithfully,

(Sd.)

(ASHOK KUMAR GOEL)

(11) The perusal of the above shows that it is on the recommendations of the Fourth Pay Commission that it was decided that employees retiring on or after 1st January, 1996 would be permitted to commute pension equivalent to 40% of the basic pension. Besides commuted portion of pension shall be eligible for restoration after 15 years from the actual date of commutation. The second para of the instruction lays down that the provisions of Chapter 11 of Punjab Civil Services Rules, Volume II would be deemed to have been amended to the extent as stated therein and necessary notification shall be issued in due course. It is however pertinent to note that the other provisions and the table referred to in Rule 11.5 (2) of the Rules, is to remain unchanged.

(12) Chapter XI of the Punjab Civil Service Rules Volume II relates to commutation of Civil Pensions. Rule 11.5 of the Rules under the said chapter reads as under :—

- (1) “The lump sum payable on commutation shall be calculated in accordance with a table or tables of present values which shall be prescribed by the competent authority.”

“*Note 1.*—The lump sum payable on commutation to Government employees who have served under more than one Government when the commutation tables applied by the different Governments are not identical, shall be calculated according to the commutation table of the Government under whose rule making control they are, at the time of retirement. In the case of Government employees who are temporarily lent by one Government to another, the commutation shall be according to the table of the lending Government and in the case of those who are permanently transferred from one Government to another it shall be according to the table of the Government to which their services have been permanently transferred.

Note 2.—In the event of the table of present values applicable to an applicant having been modified between the date of administrative sanction to commutation and the date on which commutation is due to become absolute, payment shall be made in accordance with the modified table, but it shall be open to the applicant if the modified table is less favourable to him than that previously in force, to withdraw his application by notice in writing despatched within 14 days of the date on which he receives notice of modification.

- (2) The table of present values is given in Annexure to this Chapter and will be applicable to all Government employees.

For the purpose of this rule, the age, in case of impaired lives, shall be assumed to be such age, not being less

than the actual age as the certifying medical authority may direct.”

(13) The copy of the table referred to in Rule 11.5(2) is attached as Annexure R-4 with the written statement, This table corresponds to the commutation table in respect of Central Government employees. The commutation table Annexure R-4 is based on the rate of interest of 4.75 p.a. and the improvement in mortality rate as is adopted by the Central Government in the case of their pensioners (commutation value for a pension of rupee one per annum). In the said table, the age, next birthday and commutation value expressed as number of years purchase has been indicated. This table as per the Punjab Government instructions dated 21st July, 1998 is to remain unchanged. It may be noticed that in the Punjab Government letter dated 21st July, 1998 a reference has been made of an earlier letter dated 16th July, 1998. The relief that has been granted in terms of the Punjab Government letter dated 21st July, 1998 is that the employees who retire on or after 1st January, 1996 would be permitted to commute pension equivalent to 40% of their basic pension. However, the commuted portion of pension shall be eligible for restoration after 15 years from the actual date of commutation. The same nowhere provides that the multiplier of 15 would apply to the factor of their purchase value as is sought to be contended by the learned counsel for the petitioners. Earlier to the issuance of the instructions dated 21st July, 1998 Rule 11.1(a) of Chapter XI Volume II Part I of the Rules entitled an employee to commute for lump sum payment any portion of pension consisting of whole rupee, not exceeding one-half of any pension which has been or may be granted to the pensioner under provisions of Punjab Civil Services Rules. However, the lump sum payable amount of commutation is to be calculated in accordance with the commutation table provided under Rule 11.5(2) of the Rules. The commuted value of pension is dependant upon the age of the pensioner on his next date of birth.

(14) Therefore, earlier the letter dated 8th December, 1981 related to restoration of surrendered portion of pension to the pensioners after he has attained the age of 70 years. In terms of the said letter a government employee was entitled to commute any portion of his pension not exceeding one third of the amount of pension which had been granted to him in terms of Rule 11.1(b). This commutation was

permissible immediately after retirement or at any time thereafter at the option of the retiree. A pensioner who opted for commutation of a portion of his pension in this manner was paid a lump sum amount calculated in accordance with the provisions contained in Chapter XI of the Rules. Since the actual value of that part of the pension which had been commuted was proportionately reduced to the extent of the commuted portion from the date the pensioner received commuted value, this portion of the pension received was not subsequently restored at any later stage. It is on the demand of the pensioners for restoration of the commutation of pension. On the plea that with the passage of time commutable number of years after the receipt of commuted value of actual amount received in lump sum is virtually repaid to the Government. Keeping this request in view, the Government decided,—*vide* said instructions dated 8th December, 1981 that in case where a pensioner commuted part of his pension and received lump sum in lieu thereof, he may be allowed restoration of the surrendered portion of the pension after he had attained the age of 70 years. This decision was in force from 1st December, 1981.

(15) Thereafter the Government of Punjab,—*vide* letter dated 19th May, 1983 clarified regarding commuted portion of pension to the petitioners. With reference to the earlier instructions dated 8th December, 1981, it has been stated that normally a portion of pension is got commuted within one year after retirement as at that time the commuted value is maximum age of 59 years and commutation of pension is permissible without medical examination. It is further stated that there can be cases where pension is got commuted in subsequent years. As an example, it was quoted that a pensioner may get the pension commuted after the age of 69 years and then get the pension restored after attaining the age of 70 years in terms of the letter dated 8th December, 1981. It was with a view to plug these types of loopholes that an order was passed by the State Government to the effect that restoration of commuted portion of pension would be allowed in future after attaining the age of 70 years and in case where the pension was commuted during the first year after retirement. It is further provided that in other cases where pension is commuted in subsequent years, the pension may be restored after the commuted value is repaid to the Government by way of reduced pension.

(16) It is thereafter that the instructions under reference i. e. instructions dated 21.7.1998 were issued which has been adopted by the Board. With the issuance of the said instructions dated 21.7.1998 the position *viz a viz* earlier instructions is as follows:—

- (i) Limit up to which portion of pension can be commuted has been raised from 1/3rd to 40%.
- (ii) The period after which the commuted portion would be eligible for restoration shall be 15 years, which was earlier on the attainment of the age of 70 years of the Pensioner and in case where the pension was commuted during the first year after retirement or where pension was commuted in subsequent years, the pension may be restored after the commuted value was repaid to the government by way of reduced pension.
- (iii) The table prescribed under rule 11.5(2) of the Rules shall remain unchanged.

As such the employees retired on or after 1st January, 1996 are permitted to commute the portion of pension equivalent to 40% of basic pension and are eligible for restoration after 15 years from the actual date of commutation. Therefore, earlier where the restoration of the surrendered portion of pension was allowed after the pensioner attained the age of 70 years in case it was commuted during first year after retirement or in other cases the commuted value was repaid by way of reduced pension, it is now allowed by way of standardisation after 15 years from the date of actual commutation. The earlier government instructions dated 19th May, 1983 also gives the following illustration and provide as follows :-

“By way of illustration it may be added that a pensioner drawing a pension of Rs. 600 p.m. is entitled to the commuted value of Rs. 19.65. If he commuted 1/3rd of his pension at the age of 65 years. The amount will be repaid to the Government in a period of 8 years and two months by way of reduced pension. So in this case

the pension will be restored on attaining the age of 73 years and two months. A further period may also be added to this age for notional recovery of interest and for this purpose the age groups may be divided into two groups. For those who get the pension commuted between 39 years and 65 years a period of one year may be added to make out for the recovery of interest, and a period of 9 months may be added for those who get the pension commuted between 65 years and 70 years.”

(17) Therefore, earlier there were to be two sets of age groups i.e. those who get the pension commuted between 59 years and 65 years and those who get it commuted between 65 years and 70 years. There was a different time frame for the restoration of pension. Now there is a fixed period of 15 years from the date of commutation irrespective of the age when the pension has been commuted. However, it is pertinent to note that the table in Rule 11.5(2) of the Rules it has been specifically mentioned in the instructions dated 21st July, 1998 would remain unchanged. This would mean that the question of applying multiplier of 15 as is contended by the learned counsel for the petitioners, does not arise. Rather rule 11.5(2) of the Rules provides that the lump sum payable on commutation value is to be calculated in accordance with the table or tables of the present values which have been prescribed by the competent authority. The method adopted for commutation is first to work out the annual amount of pension commuted and then multiply it by the factor of purchase (capitalized value of pension as given in the table). The calculation of the commuted value are to be made as under :—

- (i) Commuted portion of monthly pension X No. of months in a year i.e. 12 X factor as per table.
- (ii) The multiplier 12 here represents number of months in a year and not the years after which restoration of commuted pension is to take place.

(18) Thus in case of a Class III employee whose retirement age is 58 years and if the pension is commuted within the first year

after retirement, the amount of commuted pension is to be worked out as under :-

(40% of the basic pension) × Commutation value expressed as number of year purchase i.e. 10.46×12 .

(19) However, in the case of a Class IV employee whose retirement age is 60 years and if the pension is commuted within the first year after retirement, the amount of commuted pension is to be worked out as under :-

(40% of the basic pension) × Commutation value expressed as number of years purchase i.e. 9.81×12 .

(20) The factor 12 used in calculation of commutation is for number of months in a year after which the commuted pension is to be restored.

(21) Therefore, the contention of the learned counsel for the petitioners, that instead of multiplier of 12 the multiplier of 15 should be applied, in our view is not sustainable and is not provided for either under the Rules or in any of the instructions on which reliance is placed.

(22) The emphasis placed on the basis the order of the Hon'ble Lok Adalat in **Harinder Pal Singh Sindhu's** case (*supra*) is not of much significance. In the said case, the petitioner retired from the Directorate of Prosecution and Litigation on 30th June, 1998. His payment of retiral dues was delayed. He was paid the amount of his G.P.F. one month after his retirement. However, the other retiral dues were delayed by six months from his retirement. The primary claim of the petitioner was for the grant of interest on delayed payment which was declined. The Hon'ble Lok Adalat, however, applied the multiplier of 15 on the basis that commuted portion of pension is eligible for restoration after 15 years from the actual date of commutation. As already noticed above, the Rules and the instructions do not provide for the application of multiplier of 15. The revised instruction dated 21st July, 1998 only provide that employees retiring after 1st January, 1996 would be permitted to commute pension equivalent to 40% of their basic pension which was earlier 1/3rd in the manner as indicated above. It is further provided that the commuted

portion of pension would be eligible for restoration after 15 years from the actual date of commutation. This does not in any manner mean that multiplier of 15 is to be applied. In the circumstances, the Hon'ble Lok Adalat, though rightly held that the petitioner therein was entitled to commutation of pension at 40% of the basic pension, however in our view, it erred in holding that the multiplier of 15 was applicable.

(23) The State Government, assailed the order dated 17th February, 2000 of the Hon'ble Lok Adalat by way of Civil Writ Petition No. 7988 of 2000, which was dismissed on 2nd August, 2000, in view of the concession given by the learned Advocate General, appearing for the State. Thereafter the State Government filed Review Application No. 95 of 2001, which was dismissed on 2nd May, 2001, on the ground that the order was passed in the presence and after hearing the Learned Advocate General for the State, who had examined the matter and stated that he found that the terms in which Award had been made by the Lok Adalat was quite reasonable. It was also observed that the Advocate General had gone on record to state that Government would accept the same and comply with the order and that it had not even remotely been averred that there was a mistake on the part of the Advocate General in making the statement before the Court on 2nd August, 2000. Accordingly the Review Application was dismissed. Special Leave Petition (C) No. 5038 of 2001 against the order dated 2nd May, 2001 in Review Application was dismissed on 13th August, 2001. The order dated 13th August, 2001 passed by the Hon'ble Supreme Court of India reads as under :—

“Since the Advocate General has conceded before the High Court on the basis of which the order was passed we are not inclined to entertain the merits of the objection taken in the Special Leave Petition. The Special Leave Petition is dismissed.”

(24) Therefore, it may be noticed that the said case was primarily considered and disposed of in view of the concession given by the learned Advocate General, Punjab. The Board, however, was not a party to the said litigation. Therefore, the concession is not binding on the Board and it is binding between the parties to the said case. Besides, in the case titled *B. S. Bajwa* versus *State of Punjab (1)*, the Additional Advocate General while appearing on behalf of the

State Extended concession for fixation of seniority from a previous date even when the claim of seniority suffered from laches. This Court accepted the concession. It was held by the Hon'ble Apex Court that the concession made on behalf of the State cannot bind others who would be adversely affected thereby. Those affected persons were held to have an independent right to assail the view taken by the Division Bench.

(25) In so far as the dismissal of the Special Leave Petition in limini is concerned, the same does not mean that the order from which the petition for Special Leave to Appeal was filed has been affirmed by the Hon'ble Apex Court. When the Hon'ble Supreme Court declines to grant leave to appeal then there is no appeal. Consequently, the doctrine of merger or fusing the judgment of the lower court to that of the Appellate Court does not apply to such situation as held by a Full Bench of this Court in *Punjab State Electricity Board versus Ashok Kumar Sehgal (2)*. Besides, the Hon'ble Supreme Court in *V. M. Salgaocar and Bros. Pvt. Ltd. versus Commissioner of Income-Tax (3)* held as follows :—

“Different consideration apply when a special leave petition under Article 136 of the Constitution is simply dismissed by saying dismissed and an appeal provided under Article 133 is dismissed also with the words the appeal is dismissed. In the former case it has been laid by this Court that when special leave petition is dismissed this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. But what the court means is that it does not consider it to be a fit case for exercise of its jurisdiction under Article 136 of the Constitution. That certainly could not be so when appeal is dismissed though by a non speaking order. Here the doctrine of merger applies. In that case, the Supreme Court upholds the decision of the High Court or of the Tribunal from which the appeal is provided under Clause (3) of Article 133. This doctrine of merger does not apply in the case of dismissal of special leave petition under Article 136. When appeal

(2) AIR 1990 P & H 117

(3) AIR 2000 S.C. 1623

is dismissed order of the High Court is merged with that of the Supreme Court.”

(26) Similar is the position in case of ***Kunhayammed and others*** versus ***State of Kerala and another*** (4) wherein it was held as follows :—

“Under Art. 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.”

(27) In a more recent judgement ***S. Shanmugavel Nadar*** versus ***State of T.N. and another*** (5). The ratio of the judgment in ***Kunhayammed*** and other case (*supra*) has been reiterated. In the present case, it is Special Leave Petition which has been dismissed and, therefore, the doctrine of merger is in-applicable as there was no appeal before the Hon’ble Supreme Court.

(28) Therefore, we are of the view that the case of ***Harinder Pal Singh Sidhu*** (*supra*), which is based on the concession given by the Advocate General, Punjab would not in any case, bind the Board.

(29) The case of ***Darshan Lal Jaggi*** versus ***State of Punjab*** C.W.P. No. 1611 of 2001 decided on 10th October, 2001 referred to by the petitioner may be adverted to. This is a decision of the Hon’ble Lok Adalat. The said decision follows the rule in ***Harinder Pal Singh Sidhu***’s case (*supra*). In the said case, it was observed as under :—

It is rightly contended on behalf of the State of Punjab that the factor of multiplication to arrive at the commuted value of pension is that given in the Table referred to in Rule 11.5(2) and not the factor of 12 as represented by the petitioners. Prior to the orders annexure P-2, 1/3rd of the amount of monthly pension was multiplied by 12 to reach at the figure of commuted pension for a year and then the factor of number of years purchase as given in the Table was applied. For example, 1/3rd

(4) AIR 2000 S.C. 2587

(5) (2002) 8 S.C.C. 361

of the pension of a retiree amounted to Rs. 100. It would be multiplied by 12 to reach at the annual 1/3rd of the pension of Rs. 1,200 and in case he retired on attaining the age of 58 years and he would be of 59 years on his next birthday, number of years purchase would be 10.46. Thus the commuted amount of pension payable to such retiree would amount to Rs. 12,552. Now as a result of the order dated 21st July, 1998, 40% of the amount of monthly pension could be got commuted, which would in the case of such retiree be Rs. 120 and annual amount of commuted pension would be Rs. 1,440 and as per the Table on applying the number of years purchase 10.46, the commuted amount of pension would work out to Rs. 15,062.40. **In this view of the matter, we find that the contention of the petitioners that monthly amount of commuted pension was required to be multiplied by 15 instead of the multiplication of 12 is clearly misconceived. (Emphasis added).**

(30) Insofar as **Harinder Pal Singh Sidhu's** case (*supra*) is concerned it was observed by the Lok Adalat in **Darshan Lal Jaggi's** case that: "we are of the view that an award of Lok Adalat is made on a settlement and cannot be treated as a precedent."

(31) The perusal of the above shows that the Hon'ble Lok Adalat in **Darshan Lal Jaggi's** case (*supra*) also held that the contention of the petitioner therein that the commuted pension was required to be multiplied by 15 instead of 12 to be clearly misconceived. The Lok Adalat, however, went on to observe that the following sentence of the instructions dated 21st July, 1998 i.e. "**commuted portion of pension shall be eligible for restoration after 15 years of actual date of commutation,**" has created difficulty. It was observed that earlier i.e. after issuance of instructions dated 8th December, 1981 the restoration of commuted pension was 12 years which had now been made to 15 years from 1st January, 1996. It rightly observed that under Rule 11.5(2) Table is to remain the same. It was further observed that while on the one hand, the percentage of maximum amount of pension eligible for commutation was increased from 33.33% to 40% on the other hand the period after which the

pension was to be restored after 12 years had been enlarged by three years and that it would be restored after 15 years.

(32) The position in fact is quite different. The instructions dated 1st December, 1981 did not provide for restoration of commutation pension after 12 years. What was provided was that in cases where a pensioner commuted his pension and received lump sum thereof, may be allowed restoration of the surrendered portion of the pension after he has attained the age of 70 years. The Hon'ble Lok Adalat in all probability took it to be 12 years by taking the retirement age of an employee to be 58 and that a retiree at the time of his retirement would commute his pension. In such a situation, the restoration of the surrendered portion of pension would work out to 12 years as it would be restored when the pensioner reaches the age of 70 years. In such a situation there is a period of 12 years from the age 58 to that 70 years of a retiree. However, what would be the position if a retiree commutes his pension after he attains the age of more than 58 years. This has been explained by the Government in its subsequent instructions dated 19th May, 1983, wherein a hypothetical example has been given. It is that a pensioner may get pension commuted after the age of 69 years and then get it restored after the age of 70 years in terms of the letter dated 1st December, 1981. The instructions dated 19th May, 1983 was issued in order to plug these type of loopholes and it was ordered that the restoration of commuted portion of pension would be allowed in future after attaining the age of 70 years and in case where pension was commuted during the first year after retirement and in other cases where the pension is commuted in subsequent years, the pension may be restored after the commuted value is repaid to the Government by way of reduced pension. This position has been explained by way of example in the said letter dated 19th May, 1983 as referred to above.

(33) Therefore, the position is that the commuted value of pension is not always restored after 12 years as held in **Darshan Lal Jaggi's** case (*surpa*). It would vary depending upon the date it is commuted and the age of the pensioner at that time. In case the pension is commuted when the pensioner is 58 years, then in such a situation the restoration of the surrendered portion which is allowed at the age of 70 years. This period from 58 years to 70 years of a pensioner would work out to 12 years. This would not be the position if a pensioner commutes his pension after more than 58 years. It appears that the instructions dated 13th May, 1983 were not brought

to the notice of the Hon'ble Lok Adalat. Therefore, in our view it would not be correct to say that earlier the commuted pension was always restored after 12 years. Rather 15 years period of restoration of pension has now been standardised and the commuted value has been increased from 33% to 40%. The Hon'ble Lok Adalat in **Darshan Lal Jaggi's** case (*supra*), ultimately observed that the State Government should retrieve the original position by giving either of the following two reliefs to the retiree government servants on or after 1st January, 1996 :—

“Since undisputedly 40% of the commuted amount of pension inclusive of interest shall be recovered within about 12 years, as was the case prior to 1st January, 1996 when 1/3rd of the amount of pension was allowed to be commuted, the sentence reproduced by us above in the order dated 21st July, 1998 the commuted portion of pension would be eligible for restoration after 15 years of the actual date of commutation should be omitted and the original policy of restoration of commuted amount of pension after 12 years or on attaining the age of 70 years, whichever is later, should be restored;

OR

Since the State Government would be recovering the amount of 40% of the pension from the retiree government servant on the strength of the order annexure P-2 for a period of 15 years instead of such recovery for a period of 12 years, the State Government should allow to the retirees 25% additional sum of the commuted amount of pension worked out on the basis of the Table referred to in Rule 11.5(2) *ibid*. Such a relief alone could give real benefit to the retirees and at the same time would cause no tangible loss to the State exchequer.

Orders granting either of the above two relief shall be passed by the State Government within a period of four months from today.

This order is a settlement and an award of this Court executable as a decree under Section 21(1) of the Legal Services Authority Act, 1987. The writ petition is disposed of accordingly.”

(34) We are of the view that it is upto the State Government to revise the commutation of pension as per its wisdom and in the interest of the pensioners. It is not for this Court to lay down the policy with regard to the pensioners. This is best left to the Executive Government and may be got determined by an Expert Body like Pay Commission. They would be the best judge to evaluate the situation as regards the commutation of pensions. As such since the judgement in **Darshan Lal Jaggi's case** (supra) itself found that the contention of the petitioners of the said case that monthly amount of commuted pension was required to be multiplied by 15 instead of the multiplication of 12 to be misconceived, therefore, no benefit can be derived by the petitioners on the basis of the said judgement.

(35) This Court in the case of **T.R. Singla versus State of Punjab** C.W.P. No. 6658 of 2001 decided on 29th August, 2002, also considered the very controversy in detail and negated the contention of the petitioners therein for applying multiplier of 15. This Court considered the present instructions dated 21st July, 1998 and after referring to the judgments of the Hon'ble Apex Court, in the case of "**Common cause**" *A registered Society and others versus UOI and others* (6) and *Bharat Petroleum Corpn. Ltd. Ex-Employee Association and others versus Chairman and Managing Director Bharat Petroleum Corpn. Ltd. Bombay and others*, (7) and also the case titled *Welfare Association of Absorbed Central Government Employee in Public Enterprises and others versus Union of India and another*, (8) negated the contention of the petitioners therein to get commuted portion of the pension calculated by applying the multiplier of 15.

(36) For the reasons recorded above the Civil Writ Petitions are dismissed. The petitioners are not entitled to the commuted value of pension by applying the multiplier of 15. However, in the circumstances of the case, there shall be no order as to costs.

R.N.R.

(6) (1987) 1 S.C.C. 142

(7) 1993 Supp. (4) S.C.C. 37

(8) (1996) 2 S.C.C. 187