

STATE OF PUNJAB AND ANR.
v.
J.L. GUPTA AND ORS. ETC. ETC.

A

FEBRUARY 16, 2000

[S. SAGHIR AHMAD AND Y.K. SABHARWAL, JJ.]

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Service Law—Pensionary benefits—Government Notification gave higher benefits to employees from a specified date—Respondents who retired prior to the specified date claimed similar benefits—High Court directed payment of all dues on the basis of the notification—On appeal Held, benefits became available on a much later date by reason of change in the rules—Hence could not be given to those who retired prior to the date of the Notification.

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Respondents were the employees of the State of Punjab who retired before 31st March, 1985 and claimed higher pensionary benefits on the basis a Government Notification which gave higher pensionary benefits to employees retiring on or after 31st March, 1985. The High Court directed payment of all dues on the basis of the said Notification. Hence this appeal by the State Government.

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Allowing these appeals, this Court

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HELD : 1. Respondents are not entitled to claim the benefits under the Government Notification since the said benefits offered in the Notification became available on a much later date to the retiring employees by reason of change in rule relating to pensionary benefits, while the respondents retired much earlier. [905-H]

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State of Punjab v. Boota Singh, [2000] 3 SCC 733, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1129 of 2000 Etc. Etc.

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From the Judgment and Order dated 18.11.98 of the Punjab & Haryana High Court in C.W.P. No. 11933 of 1993.

Jayshree Anand, Additional Advocate General (Punjab), H.S. Munjral, Rajiv Dutta, H.M. Singh, B. Kanta Rao, Mrs. Sudha Gupta, Ms.

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A K. Sarada Devi, Ms. Naresh Bakshi, R.K. Kapoor, S.K. Srivastava, P. Varma, Anis Ahmad Khan, I.P. Singh, Pankaj Kalra, Mahabir Singh, Ashok K. Mahajan, Vipin Gogia, Mrs. Jaspreet Gogia, Rajiv Mehta, G. Sivabalamurugan, T.S. Arora, S.K. Mehta, Dhruv Mehta, Ms. Shobha and Sumit Kumar, for the appearing parties.

B The Judgment of the Court was delivered by

SABHARWAL, J. Leave granted.

C The ex-employees of State of Punjab are respondents in this appeal and in the connected appeals. All of them retired from the service prior to 31st March 1985. Their pensionary benefits were calculated as per the rules prevalent at the time of their retirement. By a notification/order dated 9th July, 1985 issued by Government of Punjab, Department of Finance, it was *inter alia* decided that the dearness allowance and *ad hoc* dearness allowance sanctioned up to the consumers price level index No. 568 will be

D 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. Since the respondents were not given the benefit of the aforesaid notification, they filed a writ petition in the High Court claiming the benefits conferred by the notification dated

E 9th July, 1985. The High Court by the impugned judgment dated 18th November, 1998 allowed the writ petition directing the State of Punjab to pay all dues to the writ petitioners on the basis of the order dated 9th July, 1985 noticing that the question involved in the case is squarely covered by the decision of this Court in *Dr. Asa Singh's* case.

F The decision in the case of *Dr. Asa Singh* has been considered and explained in a later decision of this Court (*State of Punjab & Ors. v. Boota Singh & Anr.*, Civil Appeal No. 10674 of 1996 decided on 7th August, 1997). In this decision, it has been noticed that in *Dr. Asa Singh's* case, after dismissal of the special level petition on 13th May, 1993, the State Govern-

G ment sought to reopen the matter by filing an interlocutory application before the High Court for clarification. The clarification application was dismissed by the High Court and the judgment of the High Court was upheld by this Court holding that since the main judgment had become final, the question could not be reagitated through mode of interlocutory

H application for clarification. It was also noticed that the decision in *Dr. Asa*

Singh's case had no applicability and *Boota Singh's* case could not be decided in the same fashion as *Dr. Asa Singh's* case because the challenge in the appeal was to the main judgment of the High Court and not to any order passed on clarification application. A

In *Boota Singh's* case it has also been held that the benefit conferred by the notification dated 9th July 1985 can be claimed by those who retire after the date stipulated in the notification and those who have retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old rules, i.e., the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implication and the specific date for the conferment of additional benefits cannot be considered arbitrary. It was further held that : B C

"In the case of *Indian Ex-Services League & Ors. v. Union of India & Ors. Etc.*, reported in [1991] 1 SCR 158 this Court distinguished the decision in *Nakara's* case (supra) and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or 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 have also distinguished *Nakara's* case (supra). The latest decision is in the case of *K.L. Rathee v. Union of India & Ors.*, (1997) 4 Scale 384 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 reason of changes in the rules relating to pensionary benefits." D E F

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. G H

- A Before parting, we place on record our deep anguish for the unavoidable litigation in this Court in the form of the present appeals at the instance of the State of Punjab/appellants. The decision in *Boota Singh's* case had been rendered more than a year earlier than the impugned judgment of the High Court. It is a matter of regret that *Boota Singh* decision was not brought to the notice of the High Court with the result
- B that the High Court, on the basis of *Dr. Asa Singh* case, allowed the writ petitions. The explanation that *Boota Singh's* case decision was not reported and it could not be brought to the notice of the counsel and, therefore, could not be cited before the High Court, shows a total casual approach particularly when the State of Punjab itself was the appellant in
- C the said case. Such casual approach results in unnecessary litigation and waste of time besides incurring of unnecessary expense and waste of public money. We can only express a hope that in future litigants such as State Governments would be more careful.

- D For the aforesaid reasons, we allow the appeals, set aside the judgment of the High Court and dismiss the writ petitions. The parties are, however, left to bear their own costs.

A.Q.

Appeals allowed