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STATE OF PUNJAB

v.

GIAN CHAND & ORS.

(Civil Appeal No. 9007 of 2012 etc.)

B

DECEMBER 13, 2012

[SWATANTER KUMAR AND MADAN B. LOKUR, JJ.]

Service Law – Pension – Commutation – Table for calculation of commutation substituted by a Circular – Affecting the employees of Punjab State Electricity Board retiring between 31-7-2003 and 31-10-2006 – Writ petition by the employees retiring between the above period contending that the Circular was to their disadvantage – High Court allowing the petitions – On appeal, new plea raised by State that Circular was issued due to financial crunch and that under the Rules, the respondents-employees had option to withdraw the request of commutation – Held: New pleas are not permissible to be raised for the first time before Supreme Court – But the new questions raised are substantial legal questions and are having far reaching consequences and hence require discussion and determination by the Court – The impugned judgment also lacks proper reasoning – Therefore, matter remitted to High Court for fresh decision in accordance with law – Cost of Rs. 50,000/- to be paid to respondent Nos. 1 to 26 in equal proportion – Punjab Civil Services Rules Vol. II – r. 11.5(1), Note 2 – Practice and Procedure – New Plea – Permissibility.

Practice and Procedure – New Plea – Raised before Supreme Court – Permissibility – Held: Not permissible – Determination of new plea may deprive either of the parties of a right to appeal to Supreme Court – Such deprivation can be construed as prejudicial to the rights and interest of the parties.

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Punjab State Electricity Board had adopted the Rules pertaining to pension contained in the Punjab Civil Services Rules, Vol. II for its employees. Table of commutation of pension was provided in terms of Rule 11.5(2) of the Civil Services Rules. Appellant-State issued a Circular dated 29.7.2003, whereby the existing table was replaced with a new table for calculation of commutation of pension and was applicable to all the cases of retirement arising on or after 31.7.2003. However, by a further Circular dated 31.10.2006, the previous circular was superseded, revising the existing table of commutation of pensions.

The employees-respondents who retired between 31.7.2003 and 30.10.2006 filed writ petition, challenging the Circular dated 29.7.2003 contending that the table of calculation of commutation of pensions, provided by that Circular was to their disadvantage. They pleaded that it was in violation of Article 14 of the Constitution. High Court allowed the petition.

In appeal to this court, appellant-State inter-alia contended that the State issued the Circular dated 29.7.2003, as the State was suffering from serious financial crunch and that the respondents had choice to withdraw the request of commutation under Note 2 to Rule 11.5 (1).

The respondents contended that all the pleas raised before this court by the appellant was raised for the first time and taking new grounds for the first time before Supreme Court could not be permitted.

Partly allowing C.A. Nos. 9007, 9010, 9011, 1912, 9013, 9014, 9015, 9016 and 9019 of 2012 and remitting them to High Court and directing to detach the C.A.Nos. 9008-9009/2012, 9017/2012 and 9018/2012 from the other appeals, the Court

A HELD: 1.1. From the record, it is clear that the substantial pleas are being sought to be raised before this Court for the first time. From the orders passed by this Court, it is clear that while granting liberty to the State to file additional affidavit, no objection was raised by the
B respondents. Now, once the additional facts and grounds had been brought on record to which the said respondents have already filed a rejoinder, they cannot be permitted to raise the objection in regard to the new grounds being examined by the Court. There are
C certainly lapses on the part of the State, but the questions raised before this Court are not only substantial legal questions but are also likely to have far reaching consequences. It is argued that the Circular dated 29th July, 2003 has been issued by the State of Punjab and the same having been quashed, there is every likelihood
D that all the employees of the State of Punjab, including various corporations, would raise similar claims. The grounds with regard to Note 2 of Rule 11.5, financial crunch of the State and there being proper rationale for fixation of the cut-off period (31st July, 2003 to 30th
E October, 2010) are matters which require discussion and determination by the Court in accordance with law. Equally, the pleas raised by the respondents require proper examination. There is no doubt that the Circular dated 29th July, 2003 does not contain any reason,
F whatsoever, for passing a directive, which enmass adversely affects the people who have retired in the period between 31st July, 2003 to 31st October, 2006. Additional affidavit filed before this Court, with the leave of the Court, does provide reasons and some justifiable
G grounds in support of the Circular. [Paras 11 and 12] [1112-A-E]

H 1.2. The judgment impugned does not discuss the plea of arbitrariness and discrimination in its proper perspective. The Court also has not deliberated upon as

to whether the law stated by this Court in the case of **V. Kasturi* is applicable to the facts of the case in hand or not, particularly with reference to the contentions raised. Another aspect which could be considered by this Court on the basis of the material produced before it, was whether the format to a statutory rule can be amended, altered or substituted by an executive order. For lack of proper reasoning in the judgment of the High Court, in view of the additional pleas raised before this Court which have significant ramifications in law and with regard to the liability of the State, the judgment of the High Court is set aside and the matter is remitted to the High Court for fresh decision in accordance with law. [Paras 12 and 13] [1112-F-H; 1113-A-B]

1.3. The determination of the contentions raised before this Court for the first time may deprive either of the parties of a right to appeal to this Court. Deprivation of right to appeal can be construed as prejudicial to the rights and interests of the parties to the *lis*. [Para 13] [1113-C-D]

1.4. The Civil Appeal Nos. 9007 of 2012, 9010-9016 of 2012 and 9019 of 2012 are partly allowed and the matter is remitted to the High Court, however, with cost of Rs.50,000/- to be paid to the respondent Nos.1 to 26 in equal proportion cost being conditional to the hearing of the writ petition, in default thereto, the appeal preferred by the State shall stand dismissed. [Para 14] [1113-D-E]

**V. Kasturi v. Managing Director, State Bank of India* 1998 (5) SLR 629; *State of Bihar v. Bihar Pensioner's Samaj* (2006) 5 SCC 65; *State of Punjab v. Amar Nath Goyal* (2005) 6 SCC 754; 2005 (2) Suppl. SCR 549; *Union of India v. P.N. Menon and Ors.* (1994) 4 SCC 69; *Chairman, All India Railway Recruitment Board and Anr. v. M. Shyam Kumar and Ors.* (2010) 6 SCC 614; 2010 (6) SCR 291; *D.S. Nakara v. Union of India* (1983) 1 SCC 305; 1983 (2) SCR 165; *Dr.*

A *Rajinder Singh v. State of Punjab* (2001) 5 SCC 482: 2001(2) SCR 1108 – referred to.

B 2. As the questions arising Civil Appeal Nos. 9008-9009/2012 and 9017-9018/2012 are different and the High Court has dealt with these questions on merits, the arguments raised in Civil Appeals Nos. 9007/2012, 9010-9016/2012 and 9019/2012 are not available to the State of Punjab in these cases. Thus, these cases are ordered to be detached from this batch and be listed for hearing independently. [Para 15] [1113-F-G]

C

Case Law Reference:

	1998 (5) SLR 629	Referred to	Para 8
	(2006) 5 SCC 65	Referred to	Para 8
D	2005 (2) Suppl. SCR 549	Referred to	Para 8
	(1994) 4 SCC 69	Referred to	Para 8
	2010 (6) SCR 291	Referred to	Para 8
E	1983 (2) SCR 165	Referred to	Para 9
	2001(2) SCR 1108	Referred to	Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9007 of 2012.

F

From the Judgment & Order dated 21.7.2008 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 15554 of 2007.

G

WITH

C.A. Nos.9008-9009, 9010, 9011, 9012, 9013, 9014, 9015, 9016, 9017, 9018, 9019 of 2012.

H K.V. Viswanathan, Balram Gupta, Nidhesh Gupta, Jayant K. Sud, Rakesh Khanna, Manjit Singh, AAG, Shefali Malhotra,

Adeeta Mujahid, Balaji Srinivasan, Udit Kumar Chaturvedi, Arzu Chimni (for Kuldip Singh), K.K. Mohan, Tarjit Singh (for Kamal Mohan Gupta), Ajay Pal, Suryanarayana Singh, Pragati Neekhra, Tarun Gupta, M.K. Ghai, S. Janani, K. Sarada Devi, Nikhil Nayyar, Ansar Ahmad Chaudhary for the appearing parties and M.L. Ahuja (Respondent-in-person).

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. Leave granted in all the Special Leave Petitions.

CAs @ SLP (C) Nos. 25856/08, 18878/10, 22841/09, 23121/10, 23607/10, 25387/12, 27327/08, 3110/12 and 9569/10

2. Petitioners before the High Court and Respondent Nos.1 to 26 before this Court, were in service of the Punjab State Electricity Board (for short, the 'PSEB') on different posts. All these respondents superannuated on different dates between 31st July, 2003 and 30th October, 2006 after they had satisfactorily rendered the required years of service in PSEB. Though these respondents had retired on different dates, their grievance was common and hence all of them filed a common writ petition challenging the circular dated 29th July, 2003 issued by the Government. The circular dated 29th July, 2003 reads as under :

"I am directed to invite a reference to the subject cited above and to say that the Governor of Punjab is pleased to prescribe a new table (copy enclosed) for present values for the calculation of commutation of pension to replace the present table incorporated as Annexure to Chapter XI of Punjab Civil Service Rules Volume II. This table supersedes the existing table with immediate effect and shall apply to all the cases of retirement arising on or after 31.07.2003.

2. Annexure to Chapter XI of Punjab Civil Services

A Rules shall be deemed to have been substituted accordingly. Correction slip shall be issued in due course.

B It may please be ensured that this is brought to the notice of all the employees who are retiring on or after 31.07.2003 inviting their attention to provisions of Note 2 below Rule 11.5(1) of Punjab Civil Services Rules, Volume-II.”

C 3. The grievance of the respondents was in relation to the table of calculation of commutation of pension, which had been replaced to the disadvantage of the persons who had retired within the above-referred period. They pleaded violation of Article 14 of the Constitution of India.

D 4. The PSEB had framed regulations called the Punjab State Electricity Board Main Service Regulations, Vol.I, Part I, 1972 in exercise of the powers conferred by Section 79(c) of the Electricity Supply Act, 1948. Regulation 1.7 of these Regulations provided that unless it was otherwise specifically provided in any regulation, the PSEB employees' claim to pay and allowances shall be regulated by the Regulations in force at the time in respect of which the pay and allowances are earned. It also provided that claims with regard to pension shall be by the regulations in force applicable to him at the time when the employee retires or is discharged from service. As the PSEB had not framed any Regulations of its own with regard to the Pension Rules pertaining to pension contained in the Punjab Civil Services Rules, Vol.II were to be applicable to the employees of the PSEB. The PSEB had, vide its circular dated 4th September, 1999, (Circular No. 36 of 1998) adopted the applicability of the Punjab Government Rules. Rule 11.5 of the Punjab Civil Service Rules, Vol.II dealing with the subject reads as under :

H “11.5 (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. A

Note 1. - The lump 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. B C D

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 value is given in Annexure to this Chapter and will be applicable to all Government employees. E F

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. G

5. The table of commutation of pension was prescribed by the State Government on the recommendation made by the 4th Pay Commission which was accepted by the State Government H

A and was implemented with effect from 1st January, 1996. The State of Punjab, appellant herein, issued a circular dated 29th July, 2003 replacing the existing table with a new table for calculation of commutation of pension superseding the existing table. As already noticed, this circular contains the table of
 B commutation of pension. As is clear from the above referred circular dated 29th July, 2003, it had directed deemed substitution of Annexure to Chapter XI of the Punjab Civil Services Rules, Volume II and stated that commutation table was based on rate of interest of 8 per cent per annum
 C (commutation value for pension to Re1/- per annum). However, vide circular dated 31st October, 2006, this circular was superseded. The circular dated 31st October, 2006 revised the existing table of commutation of pension and the Governor of Punjab reduced the discount rate from existing 8 per cent to
 D 4.75 per cent and consequently revised the existing table in terms of Rule 11.5(2). As a result, employees who retired between 31st July, 2003 and 30th October, 2006 are at a disadvantageous position. The respondents cited illustrations to show that they were placed at a disadvantageous position. The circular dated 29th July, 2003 is arbitrary and has no
 E reasonable nexus for making a classification between the employees who retired during the above period and the employees who retired prior to and /or after the cut off period. Before the High Court, the appellant as well as the PSEB filed a reply in which facts were hardly disputed. In that reply, it was
 F stated that the law relied upon by the respondents before the High Court was not applicable and the claim of the said respondents was generally denied. They prayed for dismissal of the writ petition.

G 6. The High Court, vide its judgment dated 21st July, 2008 accepted the writ filed by the respondents and while allowing the writ petition, the High Court noticed that no justification or clarification had been provided by the State, while making a feeble attempt to defend its stand and there was no rational
 H basis for providing the cut off dates between the period from

31st July, 2003 to 30th October, 2006. The following operative part of the judgment can usefully be reproduced at this stage : A

“After hearing the counsel for the parties, we are of the considered opinion that this petition deserves to be allowed and our opinion is further strengthened by the ratio of law, laid down in *V. Kasturi’s* case (supra) which has been followed by *Hoshiar Singh’s* case (supra). The State cannot be permitted to create two categories of retirees by providing a cut off date as there is no rationale. B

In view of the above, we allow the writ petition and quash the impugned circular dated 29.07.2003 and restore the pension of the petitioner, in accordance with the revised table, issued as per the Circular dated 31.10.2006 (Annexure P-6).” C

7. Aggrieved from the above judgment of the High Court, the State of Punjab has filed the present appeal by way of special leave challenging the legality and correctness of the above judgment. D

8. On behalf of the appellant, it is contended that : E

(a) the High Court has not correctly applied the principle of law contained in the judgment of this Court in the case of *V. Kasturi v. Managing Director, State Bank of India* [1998 (5) SLR 629]. That case related to computation of pension and not commuting of pension. F

(b) The circular was neither arbitrary nor violative of Article 14 of the Constitution of India as there was rationale behind the decision of the State Government which had been implemented by the PSEB. G

(c) The State was suffering from serious financial crunch and the State with the intention to balance H

A its financial liability, for good and valid economic reasons had issued the circular dated 29th July, 2003. Reliance in this regard is placed upon the judgment of this Court in the case of *State of Bihar v. Bihar Pensioner's Samaj* [(2006) 5 SCC 65] and
 B *State of Punjab v. Amar Nath Goyal* [(2005) 6 SCC 754].

(d) Date of retirement by itself is a reasonable classification and does not offend the doctrine of equality. Reliance in this regard is placed upon
 C *Union of India v. P.N. Menon & Ors.* [(1994) 4 SCC 69]. Vide circular dated 29th July, 2003, an attempt had been made on behalf of the Government to stabilize its financial position. It was a decision taken in the larger public interest and can even be
 D supported by subsequent reasons. Reliance for this proposition is placed upon the case of *Chairman, All India Railway Recruitment Board & Anr. v. M. Shyam Kumar & Ors.* [(2010) 6 SCC 614].

E (e) Under Note 2 to Rule 11.5(1), the respondents had a choice to withdraw the request for commutation, if they were adversely affected within 14 days from the issuance of the circular dated 29th July, 2003 in terms of the Punjab Civil Service Rules.

F 9. On behalf of the respondents, it is contended that none of these arguments were raised either in the affidavits filed before the High Court or even during the course of hearing. No records were produced to substantiate any such plea. On the contrary, it was a case of 'no stand' on behalf of the official
 G respondents as even noticed by the High Court. It is vehemently argued that the date of retirement by itself is capable of providing a rational basis for issuance of such orders and the same would affect the rights of the parties adversely. In this regard reliance is placed on the cases of *V. Kasturi* (supra) and
 H *D.S. Nakara v. Union of India* [(1983) 1 SCC 305]. According

to the respondents, the High Court has rightly applied the law as stated by this Court. Further, to substantiate their plea, it has been argued with some vehemence that no reasons are disclosed in the circular and there is no rationale for such categorization. It is also the contention that an executive circular cannot amend, alter or substitute an appendix or annexure which is the result of an exercise of statutory power. In this regard, reference is made to the judgment of this Court in the case of *Dr. Rajinder Singh v. State of Punjab* [(2001) 5 SCC 482]. The appellant cannot be permitted to take new grounds before this Court for the first time and the appeals deserve to be dismissed.

10. From the record, it is clear that none of these arguments were taken in the counter affidavit or even appear to have been addressed before the High Court during the course of arguments. The substantial pleas are being sought to be raised before this Court for the first time. It requires to be noticed at this stage that vide order dated 16th December, 2010 passed by a Bench of this Court after hearing, liberty was granted to the State to file additional affidavit. The affidavit dated 7th January, 2011 was filed on behalf of the State taking the ground that the State of Punjab had faced an acute financial crisis in the year 2003 and, in fact, was in a virtual debt trap. Since the commutation of pension is essentially loan/advance against the future payments of the monthly pension, the State Government could ill-afford to raise further debt at higher rate of interest to make such payments to employees at concessional effective rate of interest which was as low as 4.75 per cent per annum. The chart showing figures of fiscal indicators of Punjab from 2002-03 to 2006-07 was also annexed to this affidavit. Still another affidavit was filed with the leave of the Court dated 21st April, 2011 by the Deputy Secretary, Department of Finance, Punjab, Chandigarh bringing on record the policy of the Government, formula adopted for commutation factor and giving facts and figures as to how the circular dated 29th July, 2003 came to be issued.

A 11. From the orders passed by this Court, it is clear that
while granting liberty to the State to file additional affidavit, no
objection was raised by the respondents herein. Now, once the
B additional facts and grounds had been brought on record to
which the said respondents have already filed a rejoinder, they
cannot be permitted to raise the objection in regard to the new
C grounds being examined by the Court. There are certainly
lapses on the part of the State, but the questions raised before
us are not only substantial legal questions but are also likely to
D have far reaching consequences. It is argued that the circular
dated 29th July, 2003 has been issued by the State of Punjab
and the same having been quashed, there is every likelihood
that all the employees of the State of Punjab, including various
corporations, would raise similar claims. The grounds with
E regard to Note 2 of Rule 11.5, financial crunch of the State and
there being proper rationale for fixation of the cut off period (31st
July, 2003 to 30th October, 2010) are matters which require
discussion and determination by the Court in accordance with
law. Equally, the pleas raised by the respondents require proper
F examination. There is no doubt that the circular dated 29th July,
2003 does not contain any reason, whatsoever, for passing a
directive, which enmass adversely affects the people who have
retired in the period between 31st July, 2003 to 31st October,
2006. Additional affidavit now filed before this Court, with the
leave of the Court, does provide reasons and some justifiable
grounds in support of the circular. All that we propose to say is
that the contentions raised by the respective parties are worthy
of consideration in accordance with law.

12. The judgment impugned in the present petition, in fact,
does not even discuss the plea of arbitrariness and
discrimination in its proper perspective. The Court also has not
G deliberated upon as to whether the law stated by this Court in
the case of *V. Kasturi* (supra) to the facts of the case in hand
or not, particularly with reference to the contentions raised.
Another aspect which could be considered by this Court on the
basis of the material produced before it, was whether the format
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to a statutory rule can be amended, altered or substituted by an executive order. A

13. For lack of proper reasoning in the judgment of the High Court, in view of the additional pleas raised before this Court which have significant ramifications in law and with regard to the liability of the State, we are left with no option but to set aside the judgment of the High Court under appeal and remit the matter to the High Court for fresh decision in accordance with law. We would request the High Court to consider all the arguments that have been noticed by us above. All the affidavits placed on record of this Court shall also be placed before the High Court for its consideration. Another reason which can be stated in support of the view that we are taking is that the determination of the contentions raised before this Court for the first time may deprive either of the parties of a right to appeal to this Court. Deprivation of right to appeal can be construed as prejudicial to the rights and interests of the parties to the *lis*. B
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14. Accordingly, the appeal is partly allowed and the matter is remitted to the High Court, however, with cost of Rs.50,000/- to be paid to the respondent Nos.1 to 26 in equal proportion cost being conditional to the hearing of the writ petition, in default thereto, the appeal preferred by the State shall stand dismissed. E

CA's @ SLP (C) Nos.18734-18735/07, 4036/07 and 7474/07 F

15. As the questions arising in these cases are different and the High Court has dealt with these questions on merits, the arguments raised in SLP Nos. Civil Appeals @ SLP (C) Nos. 25856/08, 18878/10, 22841/09, 23121/10, 23607/10, 25387/12, 27327/08, 3110/12 and 9569/10 are not available to the State of Punjab in these cases. Thus, these cases are ordered to be detached from this batch and be listed for hearing independently. G

K.K.T.

Appeals partly allowed. H