Before Jasbir Singh, J.

T.R. SINGLA & OTHERS—*Petitioners*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 6658 of 2001

29th August, 2002

Constitution of India, 1950—Art. 226—Punjab Govt. instructions dated 21st July, 1998—Punjab Civil Services Rules, Vol. II. Chapter XI—Rl. 11.1—Commutation of Civil Pension—Rl.11.1 entitles an employee to commute a portion of his pension for lumpsum *payment—Calculation of the* lumpsum *amount of commutation in accordance with Commutation Table prescribed under the rules—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 his 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—Payment of commuted portion of pension not in the form of loan or recoverable advance—Taking into consideration many risk factors, the policy of Govt. to recover more & pay less to pensioners upon commutation is justified—Restoration of commuted portion of pensin after a period of 15 years also justified—Calculations of commutation of pension have rightly been made by the Govt.—Petitioners not entitled to any relief in view of the instructions dated 21st July, 1998.*

Held, that prior to the year 1981, there was no concept of restoration of 'commuted portion' of pension. It was a life time affair. Once commuted, amount continued to be deducted from the pension of a retiree till his life time. *Vide* insturctions dated 8th December, 1981 and subsequent instructions, it was provided that 'commuted portion' will be restored after a retiree attains the age of 70 years or 12 years from the date when portion of pension was commuted whatever is earlier. The petitioners failed to indicate as to how, after the issuance of instructions dated 21st July, 1998, they are entitled to multiply

their cummuted portion of pension by a multiplier of 15. As per contention of the respondents, multiplier of 12 or 15 has nothing to do, so far as calculation of 'commuted portion' of pension is concerned. The calculations in the case of petitioners have rightly been made to arrive at 'commuted portion' of their pension.

(Paras 16, 18 & 23)

Further held, that by commuting portion of pension and paying that portion in *lump* sum to a retiree, respondent—Government is taking a grave risk. Many risk factors are to be taken into consideration. Payment of commuted portion of pension is not in the form of loan or recoverable advance. It is one time irrecoverable settlement and if a pensioner survives till the period fixed for restoration, portion of pension commuted is restored and pensioner starts receiving full pension again. In case a pensioner dies before the expiry of period of restoration, his dependants are granted family pension and no recovery against cummuted value is made. To cover this risk factor, government may recover somewhat more amount towards payment of amount of commuted portion of pension which is to be recovered within a period of 15 years. Even in that case, still, interest on the amount recovered will be muchless as compared to the one prevalent in banking transactions.

(Para 24)

Further held, that commutation of pension is a one time affair and it is allowed to enable a retiree to meet his major commitments such as acquisition of house, marriage of children etc. after retirement. This benefit is one time benefit like gratuity and leave encashment. Once the option of commutation of pension has been availed of, there is no justification for subsequent commutation being allowed merely on account of revision of pension. The fixing of cut off date as 1st January, 1996, after revision of pay scales and pension, is perfectly justified.

(Para 36)

S.B. Nagpal, Advocate, *for the petitioners*

S.C. Sibal, Addl. A.G. Punjab with

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

JUDGMENT

JASBIR SINGH, J.

(1) Petitioners were the employees of the State of Punjab. They had retired from service after 1st January, 1996 from various departments. They have filed this writ petition with the prayer that a writ of certiorari/mandamus or any other suitable writ or direction be issued to respondents to enhance the value of commuted portion of pension, already paid to them, on the basis of instructions dated 21st July, 1998 (Annexure P-4). It has been stated that these instructions are arbitrary and due to its wrong interpretation, less amount has been paid to them. They are entitled to get commuted value of pension by calculating 40% of basic pension multiplied by 10.46 factor of year of purchase value and further multiplied by 15 corresponding to the restoration period of 15 years as there in no change of rate of interest as per Commutation Table Annexure P-3. It has further been pleaded that respondents have wrongly applied a multiplier of 12, while calculating their commuted portion of pension and in this way they had been paid 20% less amount of commuted value of their pension. It is further argued that the relief had been given to a similar employee in writ petition No. 16531 of 1998 titled as **Harinder Pal Singh Sidhu** *versus* **State of Punjab and others** decided on 17th February, 2000 whereby the pension was ordered to be commuted by applying a multiplier of 15.

(2) Facts in this case are not in dispute. It is only the interpretation and validity of instructions dated 21st July, 1998 which require consideration.

(3) Chapter XI Volume II of the Punjab Civil Services Rules (hereinafter refer to as the Service Rules) deals with Commutation of Civil Pensions. This chapter seems to have been added with a view to ameliorate the difficulties of the government employees after their retirement. There may be many cases in which government employees may not be able to discharge their major responsibilities before retirement. Commutation of pension, primarily, enables the employees to meet their commitments such as acquisition of a house, marriages of children etc. arising at the twilight of their career. Under this chapter, a retiree is entitled to get a portion of his pension in lumpsum. Rule 11.1 entitles a government employee to commute a portion of his

pension not exceeding 1/3rd (now 40%) subject to the condition that uncommuted residue of the pension shall not be less than Rs. 240 per month. Rule 11.2 mandates that an application for commutation of pension should be made in a prescribed Form Pen. 12. It also refers to other formalities which an employee is supposed to comply with, for the purpose of commutation of a portion of his pension. Rules 11.3 and 11.4 deal with the procedure to be adopted by the authorities for calculation etc. Rule 11.5 envisages that the lumpsum payable on commutation shall be calculated in accordance with a table of present values which shall be prescribed by the competent authority. It further envisages that table of present values is given in Annexure II of this chapter and will be applicable to all government employees. Rules 11.6, 11.7, 11.8 and 11.9 deal with administrative sanction and formalities of medical examination etc. of a retiree. Rule 11.10 gives an option to an employee to withdraw his application for commutation of pension by writing a notice despatched at any time before medical examination is due to take place. It also provides that this option shall expire on his appearing before medical authority. Rule 11.11, 11.12, 11.12A and 11.12B deal with the circumstances in which commutation will become absolute. Rules 11.13 to 11.16 deal with procedure for payment of commuted value and method for the payment of commuted portion of pension. Rule 11.17 mandates that commutation once sanctioned and given effect cannot be rescinded i.e. the portion of a pension once commuted cannot be restored on refund of capitalised value.

(4) The entire scheme of Chapter XI Volume II of the service Rules entitles an employee to commute, for lumpsum payment, any portion consisting of whole rupee not exceeding 1/3rd (now 40%) of his pension which has been or may be granted to him. The lumpsum payable amount of commutation is calculated in accordance with Commutation Table prescribed under the rules. It is also apparent that when a pensioner get a portion of pension commuted, his pension is reduced to the extent of commuted portion from the date he receives commuted value. Commuted value of pension depends upon the age of the pensioner as on the next birth day. For example, if an employee seeks commutation and his age on the next birth day is 59, the commutation value is equal to 10.46 years purchase, as the age next birth day increases, commutation value goes on decreasing. For a better understanding, it is necessary to reproduce relevant portion of

commutation table as referred to in Rule 11.5(2), which is annexed with the above mentioned rules :—

Age next birth day	Commutation value expressed as number of years purchase		Age next birthday	Commutation value expressed as number of years purchase
1	2		3	4
20	19.01		52	12.66
21	18.91		53	12.35
22	18.81		54	12.05
23	18.70		55	11.73
24	18.59		56	11.42
25	18.47		57	11.10
26	18.34		58	10.78
27	18.21		59	10.46
xx	xx	xx	xx	xx
			81	3.94
			82	3.72
			83	3.52
			84	3.32
			85	3.13

(5) A reading of paper book indicates that prior to 1st December, 1981 commuted portion of pension of an employee was not liable to be restored at any later date and deduction from monthly pension on account of commutation was a life time commitment. Respondent No. 1 issued instructions dated 8th December, 1981 (Annexure P-2) wherein it was prescribed that when a pensioner commutes a part of his pension and recieves lumpsum in lieu thereof, he may be allowed restoration of the surrendered portion of pension after he has attained the age of 70 years. These instructions also subsequently modified and it was stipulated that an employee/retiree will be entitled for restoration of his commuted portion of pension after

he attains the age of 70 years or 12 years whichever is earlier. This arrangement was going on very well and there was no complaint from the employees. Matter was even raised before the 4th Punjab Pay Commission. Paragraphs 125.5, 125.6, 125.7 Volume III of the Report published in the year 1998 are reproduced here as under :—

"125.5 As already mentioned above, prior to 1st December, 1981, the commuted portion of Pension was not subsequently restored at any later date during the life time of the pensioners. The decision for restoration of the commuted portion of the pension after the age of 70 years was taken with effect from 1st December, 1981. Subsequently, instructions were issued for clarification and modification of the original decision. The existing instructions provide for restoration of the commuted portion as under :—

Age group at the time of commutation	Period after which restoration is allowed
(i) When Pension is commuted before attaining the age of 59 years.	15 years after commutation or after the Pensioner concerned attains the age of 70 years, whichever is earlier.
(ii) When Pension is commuted between 59 years and 65 years.	Period during which the commuted amount is fully recovered plus one year.
(iii) When Pension is commuted between 65 years and 70 years.	Period during which the commuted amount is fully recovered plus 9 months.

125.6 We have considered the request of the employees for restoration of the commuted portion immediately after the recovery of the actual commuted value, without recovering any interest. We may mention here that the existing provisions are already fairly liberal. Those provide for the recovery of interest at nominal rate only. The Government of India, even after considering

the recommendations of the Fifth Central Pay Commission, are allowing restoration of Pension after a period of 15 years. The provisions made by the State Government are thus quite liberal compared to those of the Government of India. We are therefore not in favour of recommending any further reduction in the period after which the commuted portion of pension should be restored. The case of the employees who seek commutation before attaining the age of 58 years however, needs rationalisation. In their case we recommend that the commuted portion of Pension should be restored after the expiry of the period during which the actual commuted value is recovered plus an additional period of two years. This rationalisation is necessary because it would not be proper to fix a uniform period for restoration for the entire group of employees who may be seeking commutation with age next birthday ranging between 40 to 58 (Commutation value ranging between 15.87 years purchase to 10.78 years purchase). If Pension is commuted after superannuation but before attaining the age of 59 years, the commuted portion of Pension is recommened to be restored after the period during which the commuted value is fully recovered plus one year. Accordingly the restoration in respect of commutation obtained by Pensioners of different age groups is recommended to be allowed as under :—

Age group at the time of commutation	Period after which restoration is recommended
(i) When Pension is commuted before attaining the age of 58 years.	Period during which the commuted amount is fully recovered plus two years.
(ii) When Pension is commuted after completing 58 years but before completing 65 years.	Period during which the commuted amount is fully recovered plus one year.
(iii) When Pension is commuted after completing 65 years.	Period during which the commuted amount is fully recovered plus 9 months.

125.7 As regards the demand for the revision of the Commutation Table, we may mention that a similar demand was made by the Central Government employees before the Fifth Central Pay Commission. The Fifth Central Pay Commission has observed that the reviews undertaken at the Central level have revealed that whereas there had been a little improvement in the mortality rates, the rates of interest had increased significantly and the former was found to be not adequate enough to compensate for the latter. The revision of the Commutation Table was thus not likely to be of any advantage to the Pensioners. The Fifth Central Pay Commission considering all relevant factors however, recommended that there appeared to be a case detailed review of the mortality rates with a view to devising a commutation scheme based on current data which would be more representative and closer to ground realities. They further recommended that till such time as this was done, the status-quo should be maintained. In view of this position, we recommend that the existing Commutation Table may be continued to be followed as and when a revised Commutation Table is notified for the central employees, the same may be adopted by the State Government for the State Government employees."

(6) Arrangement regarding commutation of pension, as made applicable after December, 1981 (with some modifications), worked very well, except a demand to the effect that commuted portion be raised from 1/3rd to 40%. Keeping in view the recommendations of the 4th Pay Commission and demands of employees, the State of Punjab issued a letter dated 21st July, 1998 (Annexure P-4),—*vide* which it was stipulated that an employee, retiring on or after 1st January, 1996, will be permitted to commute pension equivalent to 40% of his pension. Commuted portion of the pension shall be eligible for restoration after 15 years from the actual date of commutation. It was also directed that the table referred to in Rule 11.5(2) of Volume II of Service Rules shall remain unchanged. The relevant portion of

the letter is reproduced as under :—

> "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. That provisions of Chapter-II 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 is due course. Other provisions and the Table referred to in Rule 11.5 (2) of the said rules shall however, remain unchanged."

(7) It is an admitted fact that all petitioners retired after 1st January, 1996. Portion of their pension was commuted and paid to them on different dates between 1996 to 1999. In the meantime, Shri Harinder Pal Singh Sidhu, who retired as Director Prosecution and Litigation, Punjab, filed a Civil Writ Petition No. 16531 of 1999 contending therein that he has been paid less amount towards commuted portion of his pension. In that writ petition, it was stated that his pension had wrongly been calculated by applying a multiplier of 12 instead of 15 and he was entitled to payment of more amount after making calculation in a correct manner. That writ petition came up for hearing before permanent Lok Adalat in the High Court and on 17th February, 2000, Writ petition was disposed of with a direction that correct amount of commutation of pension be worked out at 40% of the basic pension by applying a multiplier of 15 years and the balance amount of pension should be paid to him within a period of three months. Relevant portion of that judgment reads as under :—

> "The other grievance of the petitioner appears to be quite genuine. According to the notification issued by the Punjab Government on 21st July, 1998 annexure P-4, a retiree after 1st January, 1996 is now permitted to commute pension equivalent to 40% of the basic pension and commuted of pension is eligible for

restoration after 15 years from the actual date of commutation. As a corollary to it, the commuted value of pension i.e. 40% of the basic pension is to be multiplied by 15 years to work out the total commuted amount of pension. In fact the State Government made the calculation of commuted amount of pension accordingly at Rs. 5,88,375 subject to audit and sanction. However, the Accountant General, Punjab applied the multiplier of 12 years and worked out pension which is far less the amount due to the petitioner. We are of the considered view that the petitioner is entitled to commutation of pension at 40% of the basic pension multiplied by 15 years in accordance with the notification referred to above. This legal position is not in dispute. We accordingly directs that the correct amount of commutation of pension of the petitioner should be worked out at 40% of the basic pension applying the multiplier of 15 years and the balance amount of pension should be paid to the petitioner within a period of three months from today alongwith interest @ 12% p.a. from 1st January, 1999 till the date of actual payment."

(8) State of Punjab filed Civil Writ Petition No. 7988 of 2000 against the order dated 17th February, 2000 passed by the Lok Adalat. That wirt petition came up for hearing before a Division Bench of this Court on 2nd August, 2000 and the following order was passed :—

"Learned Advocate General, appearing on behalf of the petitioner—State of Punjab states that he has looked into the matter and finds that the terms in which the Award has been made by the Lok Adalat are quite reasonable. Further, he states that the Government would accept the same and comply with the Award. Therefore, he prays for permission to withdraw the writ petition.

We appreciate the reasonable stand finally taken by the Government.

Permission granted.

The writ petition is dismissed as withdrawn."

(9) Respondent No. 1, State of Punjab thereafter, filed a review application in the above mentioned writ petition with a prayer that order dated 2nd August, 2000 be recalled and the matter be heard on merits. A Division Bench of this Court, on 2nd May, 2001, passed the following order :—

"This application has been filed by the Government pleader on behalf of the State of Punjab for review of the order dated 2nd August, 2000. That order was passed in the presence of and after hearing the Advocate General for the State of Punjab. The Advocate General, had examined the matter and stated that he found that terms in which the award had been made by the Lok Adalat were quite reasonable. Furthermore, he had gone on record to state the Government of Punjab would accept the same and comply with the order. Inspite of the above statement having been made and recorded in Court, the Government pleader, who had filed this application proceeds to assail correctness and reasonableness of the award, *inter alia*, in paragraphs 3, 7 and 10 of the application. It is not even remotely averred that there was any mistake on the part of the Advocate General, Punjab, in making the statement before the Court on 2nd August, 2002.

We found no merit in the application. It is therefore, dismissed."

(10) State of Punjab, then filed an appeal against the order dated 2nd May, 2001 before Hon'ble Supreme Court, which was dismissed on 13th August, 2001. Order passed 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."

(11) Above mentioned facts show that the order passed in the case of **Harinder Pal Singh Sidhu** *(supra)* had become final and was implemented by the State of Punjab respondent No. 1.

(12) Petitioners and other similarly situated employees/retirees by taking a clue from that judgment had filed writ petitions in this Court. Their primary grouse is that instructions Annexure P-4 dated 21st July, 1998 allowing restoration of commuted portion of pension afters 15 year are being mis-interpreted by respondents. They had been paid less amount towards commuted value of their pension by applying multiplier of 12 only and in view of the judgment in **Harinder Pal Singh Sidhu** *(supra),* they are entitled to calculate value of their commuted portion of pension by applying a multiplier of 15. It has further been contended that respondent No. 1 is a Welfare State and by allowing restoration after 15 years, the State is getting more and paying less which is not justified. It was also contended that the case of **Harinder Pal Singh Sidhu** *(supra)* is a binding precedent and the petitioners, being similarly situated, can not be discriminated and they are entitled to get the same relief which was given to the petitioner in that writ petition. It was also argued that the classificatioin on the basis of cut off date i.e. 1st January, 1996 is not justified. Those employees who have retired before that date will be getting less towards commuted portion of their pension, that the employees retiring after 1st January, 1996.

(13) Upon notice, respondent No. 1 appeared and filed written statement contending therein that the petitioners are not entitled to get any relief on the bais of **Harinder Pal Singh Sidhu** case *(supra),* since in a subsequent judgment explanation given by the State of Punjab respondent No. 1 has been accepted and the view has been rectified by the Lok Adalat while deciding CWP No. 1611 of 2001 **Darshan Lal Jaggi** *versus* **State of Punjab** and some other cases. As such, decision in **Harinder Pal Singh Sidhu's** case *(supra),* can not be treated as a binding precedent. It was also stated that in view of the provisions of chapter XI of the Service Rules, petitioners are not entitled to calculate their commuted portion of pension by applying multiplier of 15. It was pleaded that before issuance of Instructions Annexure P-4, there was no concept of calculating commuted portion by applying multiplier of 12 as has been suggested by the petitioners. It was further averred that commutation of pension in the case of the petitioners is justified and they have rightly been paid the amount due to them.

(14) Counsel for the parties heard.

(15) The basic dispute is regarding application and interpretation of the Instructions Annexure P-4, Counsel for petitioners contended that petitioners are entitled to get commuted portion of their pension calculated by applying a multiplier of 15. To support his contention, he has relied upon a judgment rendered in **Harinder Pal Singh Sidhu's** case *(supra)*, Counsel for respondents has controverted this averment by contending that judgment in that case is not applicable. Even the Lok Adalat has changed its view in Subsequent cases.

(16) To arrive at a proper conclusion, it is necessary to know as to what is the criteria to calculate 'commuted portion' of pension. Prior to the year 1981, there was no concept of restoration of 'commuted portion' of pension. It was a life time affair. Once commuted, amount continued to be deducted from the pension of a retiree till his life time. *Vide* instructions Annexure P-2 and subsequent instructions, it was provided that 'commuted portion' will be restored after a retiree attains the age of 70 years or 12 years fromthe date when portion of pension was commuted whatever is earlier.

(17) It is common case of the parties that the 'commuted portion' was to be calculated keeping in view the Commutation Table annexed with Chapter XI of Service Rules. For example, if an employee who retired at the age of 58 years in the year 1998, on his retirement, opts for commutation of his pension before 1998, it will be calculated as under by taking the monthly pension at Rs. 600 per month :—

Monthly Pension	Portion liable for commutation	Commuted portion per annum	Commuted Value (as per table)
Rs. 600	1/3 (Rs. 200)	200x12=2400	2400x10.46= Rs. 25104

(18) So far as the above mentioned criteria is concerned, there is no dispute regarding the same. When confronted with the above mentioned situation, counsel for the petitioners failed to indicate as to how, after the issuance of instructions Annexure P-4, the petitioners are entitled to multiply their 'commuted portion' of pension by a multiplier of 15. As per contention of the respondents, multiplier

of 12 or 15 has nothing to do, so far as calculation of 'commuted portion' of pension is concerned. Respondents pleaded that after issuance of instructions P-4, 'commuted portion' of pension will be calculated as under :—

Monthly Pension	Portion liable for commutation	Commuted portion per annum	Commuted Value (as per table)
Rs. 600	40% (Rs. 240)	240 × 12 = 2,880	2,880 x 10.46 = Rs. 30,124.80

(19) The formula given for calculation seems to be justified and the same was applied by the Permanent Lok Adalat while deciding CWP No. 836 of 2001 titled as **Gurcharan Singh** *versus* **State of Punjab** decided on 10th October, 2001. In that case also, reliance was placed upon a judgment passed by the Lok Adalat in the case of **Harinder Pal Singh Sidhu** *(Supra)* and subsequent orders passed in connection thereto. Lok Adalat, after perusing the provisions of Chapter XI of the Service Rules, formulated the following opinion :-

> "It is rightly contended on behalf of the State of Punjab that the fact 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 pensioners. Prior to the orders Annexure P-2, 1/3rd or 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 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."

(20) A bare reading of the above mentioned passage from the judgement rendered in CWP 836 of 2001 coupled with discussion in the earlier part of judgment, clearly indicates that this multiplier of 12 and 15 has no relevancy, so far as the calculation of 'commuted portion' of pension in concerned.

(21) In ***"Common Cause", A Registered Society and others*** versus ***U.O.I. and others (1)*** Hon'ble Supreme Court justified and has upheld restoration of 'commuted portion' of pension after a period of 15 years (part of pension for commutation may be different in different cases). Thereafter, this principle of restoration of 'commuted portion' after 15 years has been applied by Hon'ble the Supreme Court in various cases. In ***Bharat Petroleum Corpn. Ltd. Ex-Employees Association and others*** versus ***Chairman & Managing Director Bharat Petroleum Corpn. Ltd., Bombay and others (2)*** observed as under :-

> "6. **In Common Cause** *versus* **Union of India** this Court has observed that 15 years is a reasonable period after which the commuted portion of the pension could be restored. In arriving at this conclusion, this Court adopted the principle of years of purchase and observed that an addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15 year rule and that appeared to be equitable. We find no reason why the same principle should not apply to the petitioners who were originally employed with Burmah Shell and subsequently became the employees of the respondent-Corporation which is an undertaking of the Government of India and "State" within the meaning of Article 12 of the Constitution [*See*: **Som Prakash Rekhi** *versus*

(1) 1987(1) SCC 142
(2) 1993 Supp. (4) S.C.C. 37

Union of India]. The equitable principle underlying the rule for restoration of the commuted portion of the pension after the expiry of the 15 years from the date of retirement which is applicable to the Central Government can equally be applied to the employees of the respondent-Corporation."

(22) Similarly, Hon'ble Apex Court in ***Welfare Association of Absorbed Central Government Employees in Public Enterprises and others*** versus ***Union of India and another (3)*** opined as under :—

> "13. If after the expiry of 15 years, the pensioners who have opted for one-third commutation, become entitled to restoration of pension on the ground that the lump sum amount paid had got adjusted before the said period as held in "Common Cause" case, there is no good reason for not applying the same to the petitioners who have commuted their one-thrid portion of the pension under Rule 37-A of the CCS (Pension) Rules, 1972 without any commitment for this portion of commutation. Presumably the respondents realising the fallacy have withdrawn the scheme of permitting commutation of full pension by OM No. 4/42/91-P&PW (D) dated 31st March, 1995. Para 3 of the Office-Memorandum reads as follows :-
>
> "3. The proposal to review the existing terms and conditions of absorption had been under consideration of the Government for quite some time past. The President is now pleased to ....(sic) that the existing terms and conditions of absorption shall stand partially modified to the extent indicated below :-
>
> (a) The existing facility of receiving capitalisation value equivalent to 100% commutation of pension on absorption shall stand withdrawn :
>
> (b) The existing facility to draw pro rata monthly pension from the date of absorption (with option to commute 1/3rd pension wherever admissible shall continue to exist)."

(3) 1996 (2) S.C.C. 187

14. This means this issue will not arise in future.

15. For the foregoing reasons, we hold that the petitioners are entitled to the benefits as given by this Court in "Common Cause" case so far as it related to restoration of one-third of the commuted pension. Consequently, the impugned para 4 of Office Memorandum dated 5th March, 1987 is quashed. The writ petitions are accordingly allowed to the extent indicated above. No costs."

(23) In view of reasoning given above, first contention of the counsel for petitioners fails and the same is rejected. It is found that the calculations in the case of petitioners have rightly been made to arrive at 'commuted portion' of their pension.

(24) Next contention of the counsel for petitioners that, since no change has been effected in the Commutation Table, which was formulated keeping in view interest @ 4.75% per annum and the mortality rate, by ordering restoration of 'commuted portion' of pension after 15 years, respondents will be recovering more while paying less in this process. He contended that in a welfare State, such a policy is not justified. Apparently, this argument raised by the counsel for petitioners seems to be attractive, but the same can not be sustained in view of the fact "that by commuting portion of pension and paying that portion in lump sum to a retiree, respondent government is taking a grave risk. Many risk factors are to be taken into consideration. Payment of 'commuted portion' of pension is not in the form of loan or recoverable advance. It is one time irrecoverable settlement and if a pensioner survives till the period fixed for restoration, portion of pension commuted is restored and pensioner starts receiving full pension again. In case a pensioner dies before the expiry of period of restoration, his dependants are granted family pension and no recovery against 'commuted value' is made. To cover this risk factor, government may recover somewhat more amount towards payment of amount of commuted portion of pension which is to be recovered within a period of 15 years. Even in that case, still, interest on the amount recovered will be much less as compared to the one prevalent in baking transactions."

(25) A similar matter came up for hearing before Hon'ble Supreme Court in **"Common Cause", A Registered Society and others** *(supra)* wherein an application filed under Section 32 of the Constitution of India by the above mentioned society and 3 retired government servants with a prayer to struck down certain provisions of commutation of pension rules applicable to civilians and defence personnel, on the ground that those rules permit Union of India to recover more and pay less to pensioners upon commutation and it was also prayed that directions be issued to formulate a scheme rationalising provisions relating to commutation of pension. The Hon'ble Supreme Court had not aceded to that prayer. For facility of reference, relevant paragraphs 4, 5, 6 and 9 of the judgment are reproduced below :-

> "4. As the position now stands, when a pensioner commutes any part of his pension up to the authorised limit, his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension.
>
> 5. The petitioners have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and, therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation - (1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15 year formula so far as civilian pensioners are concerned.
>
> 6. The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of commuting pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place.

> 7. In dealing with a matter of this nature, it is not appropriate to be guided by the example of Life Insurance: equally unjust it would be to adopt the interest basis. On the other hand, the conclusion should be evolved by relating it to the 'years of purchase' basis. An addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15 year rule. That is more or less the basis which appears to be equitable. It may be that this would give rise to an additional burden on the exchequer but it would not be heavy and after all it would bring some relief to those who have served the cause of the Nation at great sacrifice. We are, therefore, of the view that no separate period need be fixed for the Armed Forces personnel and they should also be entitled to restoration of the commuted portion of the pension on the expiry of 15 years as is conceded in the case of civil pensioners. And for them too the effective date should be from April 1, 1985."

(26) A bare reading of the above clearly indicates that exactly similar were the arguments before Hon'ble Apex Court and the Hon'ble Apex Court justified the restoration of 'commuted portion' of pension after 15 years as is the situation in the present case.

(27) It is also necessary to mention here that,—*vide* instructions Annexure P-4 'commuted portion' of pension has been increased from 1/3rd to 40% of basic pension. In this manner, a retiree will get more in lump sum. By extending period of restoration by 3 years, no injustice appears to have been done to the pensioners by the government. Amount paid in lump sum will increase many folds during the period of restoration and in this manner the arrangement will, still, remain profitable to the retiree. Furthermore, the provisions regarding commutation of pension are optional. It is for the employee to opt for the same or not. It is necessary to move an application to get this benefit. If any of the retiree feels that this provision is not beneficial, he may opt out of the Scheme and in that event he will continue to get his full pension throughout his life.

(28) In view of the reasoning given above, second contention of petitioners also fails and the same is hereby rejected.

(29) Next contention of the counsel for petitioners to the effect that, since the government has implemented the decision in case of **Harinder Pal Singh Sidhu** *(supra)*, the petitioners, being similarly situated, are entitled to get the same relief and their 'commuted portion' of pension is required to be calculated by applying a multiplier of 15. This argument also fails to find any favour from this Court. Counsel for the respondents has vehemently contended that the decision in case of **Harjinder Pal Singh Sidhu** *(supra)* can not be made applicable to the case of petitioners. That order was passed in peculiar facts and circumstances of that case only. Counsel for respondents further stated that the Lok Adalat has no jurisdiction to pass any direction as has been done in the case of **Harinder Pal Singh Sidhu** *(supra)*. To support his contention, he has relied upon judgment of this Court in FAO No. 798 of 1999 decided on 7th Novebmer, 2001 by a Division Bench, titled as **Kamal Mehta** *versus* **General Manager, Rajasthan Roadways Transport Corporation and another.** He further stated that Harinder Pal Singh Sidhu was not entitled to that relief and he got it only because an order was passed by the Lok Adalat, affirmed by this Court and Hon'ble Supreme Court, though subsequently that very finding was not accepted by the Lok Adalat in an other case. He stated that, in view of the changed circumstances, petitioners are not entitled to the same relief.

(30) Once this court, in earlier part of the judgment, has held that the calculations in the case of petitioners have rightly been made and there is no concept of applying the multiplier of 15, while calculating the 'commuted portion' of pension, petitioners are not entitled to get benefit out of the order passed by the Lok Adalat in the case of **Harinder Pal Singh Sidhu** *(supra)*. In a subsequent judgment passed in **Kamal Mehta's case** *(supra)*, a Division Bench of this Court, after discussing various provisions of the Legal Services Authority Act, 1987, has held that Lok Adalat has no jurisdiction to decide the matter unless both the parties agreed to and arrived at an understanding, otherwise any order passed will be without its jurisdiction. Relevant portion of the judgment reads as under :—

> "We are, therefore, of the opinion that as the respondent had not acquiesced or agreed to the jurisdiction of the Lok Adalat, the proceedings taken by it were well beyond

its jurisdiction and clearly impinged upon and usurped the appellate power of the High Court. It was incumbent on an objection first raised to have returned the record to the High Court under sub-section (5) to be dealt with as per sub-section (6) and (7) of Section 20 of the Act. Not only this, even on the day when the award was being made on April 27, 2001, the learned counsel had expressed his reservations but the Lok Adalat had nevertheless chosen to give its award on the merits of the controversy.

It will be clear from the above discussion that the Lok Adalats have been conceptualised as agencies wherein matters can be amicably compromised or settled by mutual agreement. These words have been repeatedly used in the statute and if such an agreement cannot be reached, the Lok Adalat must divest itself of the controversy and must itself refer or advise the parties to approach a Court. It is true that the respondent-Corporation has been left with the liberty to file objection but this procedure is unknown to proceedings under the Act and clearly violates the principle of the finality of an award of a Lok Adalat envisaged under Section 21. This is a clear transgression on the powers of the appellate Court.

We, therefore, quash the orders dated November 24, 2000 and April 27, 2001 passed by the Lok Adalat and direct that the appeal shall be heard by the High Court ignoring the two orders aforesaid."

(31) In view of the above judgment, petitioners are not entitled to any relief on the basis of an order passed in case of **Harinder Pal Singh Sidhu** *(supra)*. It seems that a wrong benefit has been given to Harinder Pal Singh Sidhu by the State in view of order of passed by Lok Adalat which was affirmed by this Court and by Hon'ble Apex Court. Whether in such like situation, petitioners can claim parity and allege that in case they are not given the same relief, it will amount to discrimination among equals, which is not permitted under the provisions of Article 14 and 16 of the Constitution of India.

(32) The reasoning given by the Lok Adalat in the case of **Harinder Pal Singh Sidhu** *(supra)* was subsequently not approved by the Lok Adalat itself in **Darshan Lal Jaggi's case** *(supra)*. In view of the fact that the petitioners are not entitled to any relief in view of instructions Annexure P-4 and calculation of their 'commutation of pension' has rightly been made, they can not plead that any discrimination has been done to them. Their plea may be technically right but in law and in view of the facts explained in this judgment, they are not entitled to any relief whatsoever.

(33) Hon'ble Supreme Court, in ***Jalandhar Improvement Trust*** versus ***Sampuran Singh (4),*** has opined that if some wrong benefit has been given to some, others can not claim parity with them unless it is found that, that benefit was rightly given earlier to those individuals. It was a case where some plots were allotted to some individuals by treating them as local displaced persons. Some other individuals, whose land was acquired, filed a suit with a prayer that plots be also allotted to them which was decreed. First Appellate Court affirmed the finding of the trial court. Appeal filed by the Trust in High Court also failed. The matter went before Hon'ble Apex Court and after perusing the facts of that case, it was held that the respondents therein were not entitled to the allotment of plots. Relevant portion of paragraph 12 of that judgment is reproduced as under :-

> "The High Court as well as the lower appellate Court also relied upon the fact that the Trust had made similar preferential allotments as local displaced person in favour of other persons. Therefore, the Courts below came to the conclusion that even the plaintiff-respondents were entitled to such allotment. In our opinion, before coming to this conclusion the Courts below should have first decided the question whether the allotment in favour of those persons was within the scope of the Rules applicable. If it was not within the scope of the Rules then even those allotments in favour of other persons will not create a right in the respondents to claim equality with them; may be, if the allotments were made wrongly in favour of those persons, the same may become liable for cancellation, if permissible

(4) 1991(1) PLJ 340

> in law, but that will not create an enforceable right in the respondents to claim similar wrongful allotments in their favour. In our opinion, even this ground relied upon by the High Court as well as the lower appellate Court is unsustainable."

(34) Similar is the situation in this case, while affirming the judgment passed in the case of **Harinder Pal Singh Sidhu** *(supra),* this Court and the Hon'ble Apex Court, at no point of time, looked into the validity or otherwise of the provisions of Annexure P-4. The circumstances under which that judgment was affirmed found mentioned in the earlier part of this judgment. It was only on the basis of an undertaking given by the Advocate General, Punjab the appeal was ordered to be dismissed as withdrawn. Thereafter, review application and the appeal filed by the State before this Court and the Hon'ble Apex Court were also dismissed on that very ground. Under these circumstances, petitioners can not claim any parity with Harinder Pal Singh Sidhu and can not say that if they are not given the same relief as given to him, it will amount to discrimination with them.

(35) In some of connected cases, it has been argued by the concerned counsel, though not in this case, that,—*vide* instructions Annexure P-4 dated 21st July, 1998, cut off date i.e. 1st January, 1996, for getting benefit of 40% towards 'commuted portion' of pension and restoration after 15 years, has wrongly been fixed which amounts to an unreasonable classifications, since, a retiree before 1st January, 1996 will get less benefit than those retiring after that date. For supporting this contention, reliance has been placed on a judgment of Mysore High Court in ***K. Srirangachar*** versus ***The State of Mysore and another (5).***

(36) This argument of the counsel is devoid of any force. Commutation of pension, as has been noticed, is a one time affair and it is allowed to enable a retiree to meet his major commitments such as, acquisition of house, marriage of children etc. after retirement. This benefit is one time benefit like gratuity and leave encashment. Once the option of commutation of pension has been availed of, there is no justification for subsequent commutation being allowed merely

(5) AIR 1963 Mysore 247

on account of revision of pension. The fixing of cut off date as 1st January, 1996, after revision of pay scales and pension, is perfectly justified. No second opportunity can be given to those retiree who retired before that date to commute a portion of their pension again. No such precedent, applied and followed either by the Union of India or any other State in that regard, has been brought to the notice of this Court.

(37) In view of above reasoning, the writ petition fails and the same is dismissed with no order as to costs.

(38) This order will also dispose of other bunch of connected writ petitions in the same terms.

R.N.R.

Before S.S.Nijjar, & Hemant Gupta, JJ

MANJEET KAUR & OTHERS—*Petitioners*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 8834 OF 2002

31st January, 2003

Constitution of India, 1950—Arts. 14, 16 & 226—Punjab Government instructions dated 14th January, 1998 and 23rd May, 2000—Irregularities/illegalities in the appointment of Aganwari workers/helpers—Appointment made arbitrarily, against non-existing posts, disregarding the instructions and without following the prescribed selection procedure—Termination of services without affording an opportunity of hearing—Whether violates principles of natural justice—Held, no—Affording of an opportunity of hearing before cancelling appointments based on dubious selections is not a requirement of either law or any principle of natural justice—Action of respondents in cancelling appointments neither arbitrary nor illegal—Petitions liable to be dismissed.

Held, that arbitrary decisions made by the Selection Committee would fall in the realm of fraud committed on the general public. Aggrieved are not only the affected parties. When selection and