

K. G. Walia and others v. State of Haryana and others
(M. R. Agnihotri, J.)

portions were added when Jugraj Singh ASI was absent. The circumstances and the testimony of the witness, however, do not leave any doubt that these portions came into existence on a blank paper leaving the remaining space blank for writing the subject matter of the bonds later. With this conclusion the whole thing becomes doubtful and prosecution has failed to prove that the petitioner arrested and bailed out immediately on the spot. In the circumstances in which the bail bond and surety bond came into existence, the prosecution version definitely becomes doubtful, and benefit of doubt must go to the petitioner. Other discrepancies pointed out during arguments need not be discussed, in this view of the matter.

(5) Verifications on the affidavits Exs. PE and PF shows that the contents of the affidavits are said to be correct on the deponent's knowledge as well as his information, without indicating as to which part is based on information or knowledge. Thus, Exs. PE and PF are not legally admissible in evidence.

(6) In view of the above observations, this criminal revision is accepted, conviction and sentence awarded to the petitioner, are set aside and he is acquitted of the charge. Fine if paid, be refunded.

P.C.G.

Before : M. R. Agnihotri, J.

K. G. WALIA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1570 of 1989.

28th August, 1989.

Constitution of India, 1950—Arts. 226, 309—Punjab Re-organisation Act, 1966—S. 82(6)—Punjab Civil Services Rules, Vol. I, Part I—Rls. 2.44 & 6.19-C—“Emoluments” includes “pay”—“Special pay”—Cannot be excluded from “pay” or emoluments—Rules cannot be changed to disadvantage of employees without the previous approval of Central Government—Rules framed under Art. 309—Whether can be amended or modified by executive orders.

Held, that the stand taken by the respondents is wholly untenable in law and the claim of the petitioners deserves to be allowed. Rule 6.19-C of the Punjab Civil Services Rules, Volume II, provided that the term "emoluments" when used for the purpose of reckoning of pension shall mean "pay" as defined in rule 2.44 of the Punjab Civil Services Rules, Volume I, Part I, as it stood immediately before 1st November, 1966. There was no exclusion of "special pay" from the definition of "pay" of "emoluments". These rules could not be varied to the disadvantage of the petitioners by the successor State of Haryana, without obtaining the previous approval of the Central Government, as required by the proviso to sub-section (6) of Section 82 of the Punjab Reorganisation Act, 1966. Since no such approval has been obtained, the impugned letter dated 3rd November, 1988, Annexure P/2, is inapplicable to the petitioners and cannot operate to their disadvantage.

(Para 8)

Held, that the provisions in the Service Rules of the nature of pension, gratuity, salary, wages, etc. form part of conditions of service of the employees and these rules whether framed under Article 309 of the Constitution of India, or under Government of India, Act, 1935, or Government of India Act, 1919, cannot be amended or modified by mere executive orders. Therefore, the impugned order by which "special pay" has been excluded from the definition of "pay" as also of "emoluments" for the purposes of calculation of pension, is illegal, null and void.

(Para 9)

Petition under Articles 226/227 of the Constitution of India Praying that this Hon'ble Court be pleased to:—

- (i) *Issue a Writ in the nature of Writ of Certiorari calling for the records of the respondents relating to the Orders, Annexures 'P/2' to 'P/5' and after a perusal thereof the impugned Instructions deferring the payment of Arrears of Pension from the date of retirement to 30th June, 1988 and amendment changing the definition of Emoluments contained in Rule 2.44 Punjab C.S.R., Volume I, Part I, be quashed;*
- (ii) *issue an ad interim order, directing the respondent No. 6 to pay the undisputed Arrears of Pension from 1st July, 1988 onwards without insisting upon the submission of application regarding purchase of National Saving Certificates for the amount of Arrears from 1st January, 1986 to 30th June, 1988, till the final disposal of this writ petition;*
- (iii) *issue an order directing the respondents to pay Interest on the late payment of Arrears of Pension with effect from the date of retirement to 30th June, 1988;*

K. G. Walia and others v. State of Haryana and others
(M. R. Agnihotri, J.)

- (iv) issue any other appropriate writ, direction or order as this Hon'ble Court may deem fit and proper in the circumstances of this case as emanated in the body of this Writ Petition;
- (v) dispense with the prior service of notices of motion on the respondents as if the same is insisted upon, the purpose to be achieved by filing of this writ petition would be unnecessarily delayed;
- (vi) dispense with the filing of Certified Copies of the documents appended as Annexures;
- (vii) award Costs of this Writ Petition to the petitioners.

M. L. Puri, Advocate, for the petitioner.

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

JUDGMENT

M. R. Agnihotri, J.

(1) This judgment shall dispose of two writ petitions Nos. 1570 and 3196 of 1989, which have been filed by the retired officers of the State of Haryana — ten in number, whose grievance is against the method of calculating pension and the manner of its payment.

(2) The petitioners joined service in the erstwhile States of Punjab and Pepsu prior to 1st November, 1956. With the reorganisation of the States under the States Reorganisation Act, 1956, the petitioners were integrated as the employees of the newly formed State of Punjab. The petitioners continued to serve as employees of the State of Punjab upto 31st October, 1966 and with effect from 1st November, 1966, they were allocated to the successor State of Haryana. It is from the State of Haryana that the petitioners have retired from service with effect from various dates — all of them prior to 1st June, 1988.

(3) On the recommendations of the Fourth Pay Commission set up for the purposes of examining the prevalent structure of emoluments and conditions of service of the employees, as also for examining with a view to having a proper pension structure for the pensioners, both past and future, the State of Haryana revised pay

scales of its employees with effect from 1st January, 1986. The decision of the State Government regarding revision and liberalisation of pensionary benefits was circulated on 3rd November, 1988, followed by another communication issued on the same date, Annexures P/2 and P/3 respectively, while pensionary benefits of various nature were provided in the aforesaid policy letters as also dated 23rd January, 1989 (Annexure P/4) with regard to the method of calculation of pension and the manner in which the same was to be paid. It is against these decisions that the petitioners have approached this Court with the following grievances:

- (1) Though the rates of pension, for the employees who retired on or after 1st January, 1986, have been revised, yet the term 'emoluments' for the purpose of calculating various retirement and pensionary benefits shall mean 'basic pay' as defined in rule 2. 44(a)(i) of the Punjab Civil Services Rules, Volume I, Part 1. i.e., excluding "special pay" therefrom.
- (2) A rider has been added in the policy decision that "arrears of all kinds becoming payable on the basis of implementation of the order upto 30th June, 1988, may be paid in the form of long term deposits in National Savings Certificates/National Savings Schemes", that is, not in cash.

(4) So far as the second grievance of the petitioners regarding payment of arrears of pensionary benefits is concerned, this Court has already struck down this very rider contained in the aforesaid policy letter dated 3rd November, 1988 (Annexure P. 2), in its judgment in (*Jagdev Krishan Nanda and others vs. The State of Haryana and another*) (1), dated 11th August, 1989. It was held therein that such a rider could not be introduced in the statutory rules by executive instructions, in the face of statutory rules providing to the contrary. Resultantly, in that judgment, a direction was issued to the State Government to the effect that "the benefits as a result of the implementation of the decision contained in letter dated 3rd November, 1988, shall be worked out and paid to the petitioners and other employees similarly situated in cash, within a period of four months." Therefore, this grievance of the petitioners stands redressed. As a necessary consequence, similar directions contained in letters dated 3rd November, 1988 (Annexure P/3) and

(1) CWP. 1990 of 1989, decided on 11th August, 1989.

K. G. Walia and others v. State of Haryana and others
(M. R. Agnihotri, J.)

dated 23rd January, 1989 (Annexure P/4), regarding investment of the arrears of pensionary benefits in National Savings Certificates; National Savings Schemes also stand quashed.

(5) Equally meritorious and legally forceful is the case of the petitioners with regard to the method of calculation of retirement and other pensionary benefits, inasmuch as the term "emoluments" on the basis whereof the amount of pension has to be calculated, cannot be restricted to mean 'basic pay' alone of the retiring employee. It has necessarily to include "Special Pay" also, as the same stood included in the definition of the expression "Pay" under rule 2.44 of the Punjab Civil Services Rules, Volume I, Part I.

(6) The mainstay of the petitioners' case is that the conditions of service applicable to them immediately before 1st November, 1966, that is, the date of their allocation to the successor State of Haryana, could not be varied to their disadvantage except with the previous approval of the Central Government, much less by executive order like the impugned order dated 3rd November, 1988 Annexure P/2. Since neither the previous approval of the Central Government has been obtained nor have the statutory rules been amended before passing the impugned order, which is executive in nature, the petitioners are entitled to have their pension calculated by including "Special Pay" drawn by them in their total emoluments, that is, the aggregate pay drawn by them on the date of retirement.

(7) In the written statement filed by the respondents, though the factual and legal position has not been denied, yet the only stand taken by them is that the conditions of service of the petitioners have not been varied to their disadvantage inasmuch as in the impugned letter dated 3rd November, 1988 (Annexure P/2), only the existing statutory provisions have been reiterated. In nutshell, the plea taken by the State is that as the State Government is fully competent to lay down the mode of calculating various retirement and other pensionary benefits, the definition of the term "emoluments" has rightly been restricted to the "basic pay" alone, thereby excluding there from the "Special Pay" drawn by an employee.

(8) Having heard the learned counsel for the parties and after going through their pleadings and the material on the record, I am of the considered view that the stand taken by the respondents is wholly untenable in law and the claim of the petitioners deserves

to be allowed. Rule 6.19-C of the Punjab Civil Services Rules, Volume II, provided that the term "emoluments" when used for the purpose of reckoning of pension shall mean "pay" as defined in rule 2.44 of the Punjab Civil Services Rules, Volume I, Part I, as it stood immediately before 1st November, 1966. There was no exclusion of "special pay" from the definition of "pay" or "emoluments". Rules 6.19-C of C.S.R. Vol. II, and 2.44 of the C.S.R. Vol. I, Part I, are reproduced below:—

"A — EMOLUMENTS RECKONING FOR PENSION

6.19-C. The term 'emoluments' when used for this purpose shall mean 'pay' as defined in rule 2.44 of the Punjab Civil Services Rules, Volume I, Part I, including dearness pay as determined by the orders of the Government issued from time to time, which the employee was receiving immediately before his retirement, or the date of his death".

"2.44 (a) Pay means the amount drawn monthly by a Government employee as :—

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, special pay and personal pay, and
- (iii) any other emoluments which may be specially classed as pay by the competent authority."

These rules could not be varied to the disadvantage of the petitioners by the successor State of Haryana, without obtaining the previous approval of the Central Government, as required by the proviso to sub-section (6) of Section 82 of the Punjab Reorganisation Act, 1966. Since no such approval was obtained, the impugned letter dated 3rd November, 1988, Annexure P/2, is inapplicable to the petitioners and cannot operate to their disadvantage.

(9) Otherwise also, it has been settled by the Supreme Court that the provisions in the Service Rules of the nature of pension, gratuity, salary, wages, etc. form part of conditions of service of the employees and these rules whether framed under Article 309 of

K. G. Walia and others v. State of Haryana and others
(M. R. Agnihotri, J.)

the Constitution of India, or under Government of India Act, 1935, or Government of India Act, 1919, cannot be amended or modified by mere executive orders. Therefore, the impugned order dated 3rd November, 1988 (Annexure P/2) by which "special pay" has been excluded from the definition of "pay" as also of "emoluments" for the purposes of calculation of pension, is illegal, null and void.

(10) Viewing it from the point of rationale also, it would be evident that when on the recommendations of the Fourth Pay Commission, the State Government revised the pay scales of its employees with effect from 1st January, 1986, it also doubled simultaneously the then existing rate of "special pay" with effect from 1st January, 1986, by order dated 11th January, 1988, Annexure P/1. Unless the intention had been to include the "special pay" in the definition of "pay" as also in the definition of "emoluments" for the purposes of calculation of pension, there was hardly any necessity of doubling the special pay. Therefore, for this reason also, "special pay" shall have to form part of "pay" and "emoluments".

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

- (1) Special pay drawn by the employees immediately before their retirement shall be included in the definitions of "Pay" and "emoluments" for the purposes of calculating of pension and all other retirement and pensionary benefits; and
- (2) retirement and pensionary benefits as a result of implementation of the decision contained in letter dated 3rd November, 1988, Annexure P/2, shall be worked out and paid to the employees within a period of four months from today, with interest at the rate of 18 per cent per annum from the date of retirement to the date of actual payment.

(12) The petitioners shall also be entitled to the costs of these petitions which are quantified at Rs. 500 in each case.

P.C.G.