

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.129 of 2003

STATE OF PUNJAB &amp; ORS. Appellant(s)

VERSUS

AMAR NATH GOYAL & ORS. Respondent(s)  
(With appln. for intervention and office report)

WITH

Civil Appeal Nos.132, 133, 1838, 1847 of 2003 & 902 of 2004  
(With office report)Special Leave Petitions (C) No.2947, 6652-6675, 6676-6696,  
6697-6722, 6724-6747, 6748-6778, 6779-6810, 6811-6830, 6831-6854,  
6855-6886 of 2003 & 12071-12072 of 2004

(With appln.(s) for c/delay in filing/refiling SLP and office report)

Date : 27/07/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)-Mr. P.N. Misra, Sr.Adv.

State of Punjab:Mr. H.M. Singh, Adv.

Ms. Shabana Saifi, Adv.

Mr. Ranbir Yadav, Adv.

Mr. Kaushal Yadav, Adv.

Mr. Anil Hooda, Adv.

Ms. Naresh Bakshi, Adv.

For Respondent (s)

-UOI:Mr. G.E. Vahanvati, S.G.

Dr. K.S. Chauhan, Adv.

Mr. V.K. Verma, Adv.

Mr. V.K. Burman, Adv.

Mr. M.P. Mittal, Adv.

Mr. Ashok Mahajan, Adv.

Ms. Sudha Gupta, Adv.

Mr. Mahabir Singh, Adv.

Mr. I.P.Singh, Adv.

Ms. Madhusmita Bora, Adv.

Mr. Gagandeep Sharma, Adv.

Mr. Dinesh Verma, Adv.

Ms. Suresh Kumari, Adv.

for Mr. A.P. Mohanty, Adv.

For PSEB:Mr. Vivek K. Goyal, Adv.

Mr. Gopal Prasad, Adv.

Mr. A.V. Palli, Adv.  
Ms. Rekha Palli, Adv.

Mr. RS. Suri, Adv.

Mr. P.N. Puri, Adv.

Mr. Yash Pal Dhingra, Adv.

Mrs. Sarla Chandra, Adv.

Ms. Jaspreet Gogia, Adv.

Mr. DK. Garg, Adv.

Mr. Jagjit Singh Chhabra, Adv.

Mr. Dinesh Kumar, Adv.  
Ms. Naresh Kumari, Adv.  
Mr. AP. Mohanty, Adv.

Mr. Kuldip Singh, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The Government of India, in terms of Office Memorandum dated 14th July, 1995, decided that Dearness Allowance as mentioned in the said O.M. shall be treated as Dearness Pay for reckoning emoluments for the purpose of retirement gratuity, death gratuity under Central Civil Services (Pension) Rules, 1972 in the case of central government employees who retired or died on or after 1st April, 1995. The Government of Punjab issued a circular dated 13th December, 1996 in respect of similar aspect of treatment of Dearness Allowance as Dearness Pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity in the case of Punjab Government employees who retire or die on or after 1st April, 1995.

The circular insofar as it restricted the grant of benefit to those who retired on or after 1st April, 1995 was challenged in various petitions filed in the High Court of Punjab and Haryana. By judgment dated 3rd May, 2002, the High Court held that those employees who retired on or after 1st July, 1993 shall be entitled to the benefit of the circular dated 13th December, 1996. The judgment of the High Court is under challenge in this appeal (C.A.No.129/2003) and various other connected matters.

One of the matters that has been tagged with this bunch of cases is S.L.P.(C) Nos.12071-12072/2004. This matter is also listed for regular hearing but it appears that the respondent has not been served. In this S.L.P., the challenge of Union of India is to a decision of the High Court of Himachal Pradesh whereby a writ petition challenging the order of the Central Administrative Tribunal, Chandigarh Bench has been rejected and the writ petition dismissed. The Central Administrative Tribunal in the said case has decided in favour of the retirees, relying upon a Full Bench judgment of the Tribunal, Mumbai, dated 21st September, 2001 in the case of Baburao Shanker Dhuri & Ors. etc.etc. Vs. Union of India & Ors., noticing that though the writ petition against the order of the Full Bench of the Central Administrative Tribunal was pending in the Bombay High Court but no stay had been granted. The Full Bench of the Central Administrative Tribunal has directed that those who retired between 1st July, 1993 and 31st March, 1995 are entitled to the benefit of the scheme of merger of 97% Dearness Allowance in the pay for purpose of calculating death/retirement gratuities.

The position that emerges from the aforesaid facts is that the challenge of Union of India to the aforesaid Full Bench decision of the Central Administrative Tribunal is pending before the Bombay High Court. Simultaneously, following the Full Bench decision, the Bench of the Tribunal at Chandigarh has granted relief to the retirees. That order of the Tribunal has been upheld by the High Court of Himachal Pradesh. The decision of the Himachal Pradesh High Court is under challenge in S.L.P.(C) Nos.12071-12072/2004. The substantial ground on which Punjab Government adopted the date, 1st April, 1995, was on the basis of the O.M. dated 14th July, 1995 which is the subject matter of Civil Appeal No.129 of 2003 and other connected matters decided by High Court of Punjab & Haryana.

In view of the aforesaid position, firstly, it would be appropriate if the S.L.P. above-referred is heard simultaneously with Civil Appeal No.129/2003. The petitioner-Union of India in this S.L.P. and other connected petitions shall take immediate steps to serve respondents for whom

ich purpose dasti notice in addition be also given.

The learned Solicitor General makes an oral application for transfer of Writ Petition pending in the Bombay High Court to this Court. Having regard to the entire controversy, we are of the view that this is the proper course to follow. It would be expedient to transfer pending writ petition from Bombay High Court to this Court so that all matters on similar question are finally determined. The particulars of the matter/matters pending in the Bombay High Court be supplied in the Registry within two days. On the same being filed, the writ petition/s pending in the Bombay High Court shall stand transferred to this Court. On receipt of the papers from the High Court, notices shall be issued to the parties concerned in those cases and their respective counsel.

List for directions after four weeks.

(N. Annapurna)  
Court Master

(V.P. Tyagi)  
Court Master