

THE STATE OF PUNJAB AND ORS.

A

v.

MANOHAR LAL MIRCHEA

APRIL 25, 1997

[K. RAMASWAMI, G.T. NANAVATI AND
K. VENKATASWAMI, JJ.]

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Service Law :

Punjab Superior Judicial Service Rules 1963—Rule 16—Amendment made on 22.2.1990—Benefit of—Prior to amendment—Applicability of—Rule applicable to the members of Punjab Superior Judicial Services, providing certain superannuation pension benefit and post retirement benefits to direct recruits retired prior to 22.2.1990—Held, the amendment made in Rule 16 applies only to those who were/are in service and retired/retire after it has come into force—Hence the claim made by the respondent has to be regarded as misconceived and without any substance.

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The Respondent joined Punjab Civil Service (Judicial) and was subsequently promoted and became a member of the Punjab Superior Judicial Service. He retired as a District and Sessions Judge on 31.12.1984. As he retired as a member of the Punjab Superior Judicial Service, for the purpose of determining his death-cum-retirement benefits the All India Service (Death-cum-Retirement Benefits) Rules, 1958 applied to him. Accordingly his pension was fixed. On 22.2.1990, the State amended Rule 16 of the Punjab Superior Judicial Service Rules and made two changes. In respect of death-cum-retirement benefit of the members of that Service the Punjab Civil Service Rules were made applicable instead of the All India Service Rules which were applicable till then. Another change was in respect of direct recruits to the service. In their case the actual period at the bar not exceeding 10 years will have to be added to his service qualifying for superannuation pension and other retirement benefits.

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Rule 4.2 of the Punjab Civil Service Rules Volume II provides that an officer appointed to a service of post may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty

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A five years or a period of five years, whichever is least. The said Rule has been made applicable to those who are recruited after 26.10.60. Validity of that Rule was challenged before the High Court in *Raj Kumar Gupta v. State of Haryana*, (C.W.P. No. 11756 of 1989) and on 17.9.91 the High Court declared it as invalid being violative of Article 14 of the Constitution.

B The Respondent made a representation sometime thereafter for refixation of his pension by giving him benefit of Rule 4.2. It was rejected by the State Government on the ground that the respondent at the time of his retirement was governed by the All India Services (Death-cum-Retirement Benefits) Rules and not by the Punjab Civil Service Rules Volume II
C and, therefore he was not entitled to claim the benefits of Rule. 4.2. It was also rejected on the ground that the amendment of 22.2.1990 made in Rule 16 of the Punjab Superior Judicial Service Rules was only prospective.

The Respondent therefore filed a Writ Petition in the High Court and the same was allowed following its judgment in *Raj Kumar Gupta v. State of Haryana* by holding that the cut-off date was arbitrary. The Sate, D therefore filed the appeal before this Court.

Allowing the appeal, this Court

E HELD : 1. Prior to 22.2.90 members of the Punjab Superior Judicial Service, in respect of their death-cum- retirement benefits were governed by the All India Services (Death-cum-Retirement Benefits) Rules Volume II. Though the Respondent claimed the benefit of Rule 4.2 of the Punjab Civil Service Rules Volume II it was really by virtue of the amendment made in Rule 16 of the Punjab Superior Service Rules which made those
F Rules applicable from 22.2.90. [1038-F-G]

2. The amendment made in Rule 16 applies only to those who were/are in service and retired/retire after it has come into force. Therefore claim made by the respondent has to be regarded as misconceived and without any substance. [1038-G-H]
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State of Punjab v. S.S. Dewan, (Civil Appeal No. 506 of 1992) (P & H), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3095 of
H 1997.

From the Judgment and Order dated 10.5.93 of the Punjab & A
Haryana High Court in L.P.A. No. 200 of 1993.

Manoj Swarup (N/P) for the Appellants.

K.C. Dua for the Respondent.

The Judgment of the Court was delivered by

NANA VATI, J. Leave granted. Heard learned counsel for the appel-
lants. The respondent, though served, has not appeared either in person
or through a lawyer.

The respondent, who had, by 2.4.56, 7 years' standing at the Bar,
joined Punjab Civil Service (Judicial) on that date. He was subsequently
promoted and became a member of the Punjab Superior Judicial Service.
He retired as a District and Sessions Judge on 31.12.84. As he retired as
a member of the Punjab Superior Judicial Service, for the purpose of D
determining his death-cum-retirement benefits the All India Services
(Death-cum-Retirement Benefits) Rules, 1958 applied to him. Accordingly
his pension was fixed. On. 22.2.90 the State of Punjab amended Rule 16
of the Punjab Superior Judicial Service Rules and made two changes. In
respect of death-cum-retirement benefits of the members of that Service E
the Punjab Civil Service Rules were made applicable instead of the All
India Service Rules which were applicable till then. Another change was
in respect of direct recruits to the Service. In their case, the actual period
of practice at the Bar not exceeding 10 years will have to be added now to
his service qualifying for superannuation pension and other retirement F
benefits. Rule 4.2 of the Punjab Civil Service Rules Volume II provides
that "an officer appointed to a service of post may add to his service
qualifying for superannuation pension (but not for any other class of
pension) the actual period not exceeding one fourth of the length of his
service or the actual period by which his age at the time of recruitment
exceeds twenty five years or a period of five years, whichever is least, if the G
service or post is one :

(a) for which the post graduate research or specialist qualification,
or experience in scientific, technological or professional fields is essential,
and

A (b) "....."

B The said Rule has been made applicable to those who are recruited after 26.10.60. Validity of that Rule was challenged before the Punjab and Haryana High Court in *Raj Kumar Gupta v. State of Haryana*, (C.W.P. No. 11756 of 1989) and on 17.9.91 the High Court declared it as invalid being violative of article 14 of the Constitution.

C Respondent, therefore, made a representation sometime thereafter for refixation of his pension by giving him benefit of Rule 4.2. It was rejected by the State Government on 9.7.92 on the ground that the respondent at the time of his retirement was governed by the All India Services (Death-cum-Retirement Benefits) Rules and not by the Punjab Civil Service Rules Volume II and, therefore, he was not entitled to claim the benefit of Rule 4.2. It was also rejected on the ground that the amendment of 22.2.90 made in Rule 16 of the Punjab Superior
D Judicial Service Rules was only prospective and the benefit of the judgment of the Punjab and Haryana High Court in *S.S. Dewan v. State of Punjab* cannot be given as the said decision was under challenge before this Court and operation of the order passed in that case was stayed. The respondent, therefore, filed a writ petition in the Punjab
E and Haryana High Court. It was allowed, following its judgment in *Raj Kumar Gupta v. State of Haryana* (supra) by holding that fixing 26.10.60 as the cut-off date was arbitrary. The State has, therefore, filed this appeal.

F As stated earlier prior to 22.2.90 members of the Punjab Superior Judicial Service, in respect of their death-cum-retirement benefits were governed by the All India Services (Death-cum-Retirement Benefits) Rules and not by the Punjab Civil Service Rules Volume II. Though the respondent claimed the benefit of Rule 4.2. of the Punjab Civil Service Rules Volume II it was really by virtue of the amendment made in Rule
G 16 of the Punjab Superior Service Rules which made those Rules applicable from 22.2.90. As we have held in *State of Punjab v. S.S. Dewan*, Civil Appeal No. 506 of (1992) that the amendment made in Rule 16 applies only to those who were/are in service and retired/retire after it has come into force, claim made by the respondent has to be regarded
H as misconceived and without any substance. Therefore, in view of the

decision in *S.S. Dewan's* case (*supra*) this appeal is allowed. The judgment and order passed by the High Court is set aside and the writ petition filed by the respondent stands dismissed. In view of the facts and circumstances of the case there shall be no order as to costs. A

R.K.S.

Appeal allowed.