**(2012) 10 P&H CK 0036**

**In the Punjab And Haryana At Chandigarh**

**Case No :** LPA No. 1169, 1256, 1416, 1417, 983, 971, 1069, 1394 and 1335 of 2012 (O and M)

State of Haryana and Another — APPELLANT

Vs

Harbans Lal and Others — RESPONDENT

**Date of Decision :** 08-10-2012

**Acts Referred:**
Constitution of India, 1950 — Article 14

**Citation :** (2013) 1 SCT 86

**Hon'ble Judges :** A.K. Sikri, C.J;Rakesh Kumar Jain, J

**Bench :** Division Bench

**Advocate :** B.S. Rana, A.A.G., Haryana Mr. Vinod S. Bhardwaj, for Municipal Corporation, for the Appellant; K.S. Jaitley, R.S. Longia and Mr. Vinod Sharma, for the Respondent

**Final Decision :** Dismissed

# Judgement

A.K. Sikri, C.J.

Delay condoned

1. These 9 appeals arise out of different orders passed by the learned single Judges in different petitions. However, subject matter of all the petitions was same. All the respondents in these appeals were the employees of the Municipal Corporations in the State of Haryana under the Director General, Urban Local Bodies, Haryana, They all retired before 1st April, 2010. Since they were having pensionable jobs, on their retirement from respective dates, they had started earning pension. The pay scales of the employees of the State of Haryana were revised on the recommendations of 6th Pay Commission and this revision took place with effect from 1.1.2006. On this basis all those who were on the strength of the rolls of the Haryana Government service got the benefit of pay scales. It is not in dispute that the benefit of pay revision was extended to the Municipal Corporations as well. On the basis of pay revision made effective from 1.1.2006, those ex-employees who were enjoying pension, also became entitled to revision

in their pension. However, the Government decided to give the actual benefit of salary/pension only with effect from 1.4.2010, fixing 1.4.2010 as a date for this purpose stating that those retired before 1.4.2010 would not be entitled to arrears from 1.1.2006. In the aforesaid backdrop, the question that falls for determination is as to whether date of 1.4.2010 could be fixed as the cut-off date for actual arrears denying the benefit from 1.1.2006 even when the recommendations of the 6th Pay Commission are enforced from 1.1.2006. In the impugned judgments passed in the writ petitions filed by the respondents, it is held that fixing of date of 1.4.2010 is arbitrary with no rationale.

2. It is not in dispute that enhanced scales were made applicable from 1.1.2006 and the respondents, in all the appeals, except LPA Nos. 971, 1069, 1169 and 1256 of 2012, were in actual service on that date. The particulars of these respondents with their dates of retirement are given below:-

3. Insofar as the cases of those respondents, who retired after 1.1.2006, the position would be that as on 1.1.2006 they were in service; the pay scales were revised some time in 2010 but with effect form 1.1.2006. On that basis, all these respondents got the benefit of revised pay scales from 1.1.2006 till the date of their retirement. Their pay scales were revised from 1.1.2006 and as on the date of retirement, after the revision, they were made to retire with the revised pay scales. However, the appellants fixed cut-off date of 1.4.2010 for all those who had retired before 1.4.2010, for the purpose of actual benefit of salary/pension. Interestingly, at the same time, those, who were in service as on 1.4.2010, were given the arrears of pay calculated from 1.1.2006. On these facts, denying the benefit to those respondents, who were in service as on 1.1.2006 and retired prior to 1.4.2010, fixing of this date for the purpose of giving them the actual arrears of salary/pension, is clearly arbitrary and without any rationale. When the enhanced scales were made applicable from a particular date i.e. 1.1.2006 and these respondents were in actual service on that date, denying them this benefit of arrears of salary, but giving the same to those who were in service as on 1.4.2010 is clearly discriminatory.

4. Insofar as payment of pension to such employees is concerned, that has also been revised from the dates of their respective retirements, which occurred after 1.1.2006, as with the implementation of recommendations of pay commission, all these respondents were put in the revised scale on 1.1.2006 and, therefore, on the date of retirement they were serving in the revised pay scales. The pension is governed by Rule 6.24(1) of the Punjab Civil Service Rules, Volume-II, as applicable to the State of Haryana. This rule is as under:-

6.24(1) The term "Average emoluments" means the average calculated upon the last ten months

The said rule was amended vide notification dated 30.11.2007 to the following effect:-

6.24(1) The pension shall be calculated on the pay last drawn by the government employee on the date of retirement.

On this basis, the learned Single Judge has rightly held that the appellants are supposed to calculate the pension on the basis of last drawn pay. The relevant observations of the learned Single Judge, in this behalf, in the judgment which is subject matter of LPA No. 1394 of 2012, are as under:-

Thus, the respondents are bound by the Rules governing the pension @ 50% of the average emoluments i.e. average calculation upon the last ten months service. However, the said rules having been amended vide notification No. 3/8/04-2 dated 30.11.2007, the petitioner in CWP No. 1754 of 2010 and petitioner in CWP No. 20865 of 2010 will be entitled to pension @ 50% of the average emoluments i.e. average calculation upon the last ten months service, having retired prior to the amendment of rules, whereas, petitioner in CWP No. 9685 of 2011 and petitioner in CWP No. 20815 of 2010 shall be entitled to pension on the pay last drawn by the Government employee on the date of retirement having retired after the amendment of Rules vide notification No. 3/8/04 dated 30.11.2007. The letter R-1 cannot override the statutory rules governing the grant of pension.

In view of the above, the present petitions are allowed and the respondents are directed to make the payment towards the salary as per the revision of pay scale granted vide P-1 w.e.f 01.01.2006 till the date of retirement, in case, the same has not already been paid and thereafter, the salary having been paid as per the revised pay scales, the pension as per the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993 governing the petitioner and subsequent notification No. 3/8/04-2 dated 30.11.2007 as applicable to the respective petitioners in terms of Rule 6.24(1) of the Rules and amended vide notification dated 30.11.2007 as is applicable to them.

Insofar as LPA No. 1169 of 2012 is concerned, there are 25 respondents and they all retired prior to 1.1.2006. Therefore, there is no question of their pay revision with effect from 1.1.2006 or payment of arrears on account of pay revision. However, they felt aggrieved by the act of the appellants in not revising their pension on the basis of the recommendations of the 6th Pay Commission with effect from 1.2.2006. In these cases, adopting the cut-off date 1.4.2010, their pension was revised from 1.4.2010 instead of 1.1.2006. Aggrieved by this action, they filed the writ petition seeking benefit of revision of pension with effect from 1.1.2006 and arrears of pension on that basis. This writ petition is allowed by the learned Single Judge, in our opinion, rightly so, having regard to the discussion contained above, which we shall apply to this appeal as well. The matter is also squarely covered by a judgment of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), , wherein the court held that those who are retired after or before the cut-off date prescribed i.e. 1.4.2010 form a homogeneous class; insofar as receiving the pension is concerned, giving them different treatment would amount to invidious discrimination. In this judgment rendered by the Constitution Bench, the Court went on to hold that:

 

With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which the country endeavours to set up and the fact that the old men who retired when emoluments were comparatively low are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, by introducing an arbitrary eligibility criteria, "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and being wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in the memoranda, violates Art. 14 and is unconstitutional and liable to be struck down.

All these appeals are, accordingly, dismissed.