UNION OF INDIA

v.

ALL INDIA SERVICES PENSIONERS ASSOCIATION & ANR.

JANUARY 14, 1988

[E.S. VENKATARAMIAH AND B.C. RAY, JJ.]

Cicil Service: Pension and gratuity—Distinction between—Pension payable periodically as long as pensioner alive—Gratuity ordinarily paid once only on retirement.

Members of All India Services—Retired prior to January 1, 1973—Not entitled to claim gratuity on basis of Notification dated January 24, 1975.

Constitution of India 1950: Articles 136 and 141—S.L.P. dismissed giving reasons—Decision attracts Article 141 and becomes binding.

All India Service (Death-cum-Retirement Benefit) Rules 1958. Rule 28(6) and Government of India Notification No. 33/12/73—AIS (ii) dated January 24, 1975—Gratuity—Upward revision of—Those members of the service who retired prior to January 1, 1973 not entitled to benefit of the additional amount.

In a petition filed by the All India Services Pensioners' Association, and an I.A.S. Officer who had retired from service prior to 1.1.1973 (respondents in the Appeal) the Central Administrative Tribunal by its decision dated August 5, 1985, declared that Rule 28(6) of the All India Services (Death-cum-Retirement Benefits) Rules; 1958 insofar as it tended to restrict pensioners to retirement benefits to which they were entitled on the date of their retirement, and sought to deny them the benefit of the liberalised pension and gratuity in the amended Notification No. 33/12/73-AIS (ii) dated January 24, 1975 was violative of Article 16 of the Constitution, and directed that all the members of the All India Service would be entitled to liberalised pensionary benefits including gratuity as per the said Notification irrespective of whether they had retired prior to January 1, 1973 or thereafter.

The Appellant—Union of India in its appeal by Special Leave to this Court had not questioned the Tribunal's order insofar as its liabil-

A ity to pay pension was concerned, but sought leave against the direction to pay gratuity in accordance with the Notification even to those members of the All India Services who had retired prior to January 1, 1973.

On the question: whether the members of the All India Services who had retired prior to January 1, 1973 are entitled to payment of
B gratuity as a part of retirement benefits at the rates specified in the Notification No. 33/12/73–AIS (ii) dated 24. 1. 1975.

Allowing the appeal,

HELD:1. In the *Andhra Pradesh State Government Pensioners'*
C *Association* v. *State of Andhra Pradesh,* [1986] 3 SCC 501 this Court had given reasons for not applying the rule in *D.S. Nakara* v. *Union of India,* [1983] 2 SCR 165 insofar as the liability of the Government to pay gratuity on retirement is concerned. [704A-B]

2. The views expressed by this Court apply to all cases of gratuity
D where similar features exist and it should apply to the instant case too. [704D]

3. The way the Tribunal in the instant case, has tried to ignore the decision of this Court in the *Andhra Pradesh State Government Pensioners' Association* case is not correct. The first ground relied on by the Tribunal not to follow the said decision is that it had been
E rendered by this Court while dismissing some special leave petitions is a wholly untenable ground. The second ground given by the Tribunal that the decision was one rendered in a case involving a Notification issued by the Andhra Pradesh Government and not one touching the Notification dated January 24, 1975 is also not tenable. [704C-D]

F 4. When reasons are given for dismissing Special Leave Petitions the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. [704B-C]

5. This Court has made a distinction between the pension payable
G on retirement and the gratuity payable on retirement. While pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement. [706C-D]

6. The observation made by this Court in *Andhra Pradesh State Government Pensioners' Association* case and in *M.L. Abhyankar* v.
H *U.O.I.,* [1981] 3 SCC 125 are binding insofar as the applicability of the

rule in *D.S. Nakara's* case to the liability of the Government to pay gratuity on retirement. [706D-E]

7.(i) The Government Notification No. 33/12/73–AIS (ii) dated January 24, 1975 neither expressly nor by necessary implication directs that those who had retired prior to January 1, 1973 would be entitled to any additional amount by way of gratuity. [706E-F[

7.(ii) The Tribunal was in error in upholding that gratuity was payable in accordance with the Government Notification No. 33/12/73–AIS (ii) dated January 24, 1975 to all those members of the All India Services who had retired prior to January 1, 1973. It is declared that the members of the All India Services who had retired prior to January 1, 1973 are not entitled to claim gratuity on the basis of the said Notification. [706F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 897 of 1987

From the Judgment and Order dated 5.8.1986 of the Central Administrative Tribunal, New Delhi in Regn. No. T–853 of 1985 (CWP No. 2709 of 1985).

G. Ramaswamy, Additional Solicitor General, P. Parmeshwaran and B. Parthasarthy for the Appellant.

Harish N. Salve, Pramod Dayal and Badri Dass Sharma for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The short question involved in this case is whether the members of the All India Services who had retired prior to 1.1.1973 are entitled to payment of *gratuity* as a part of retirement benefits at the rates specified in the Notification No. 33/12/73–AIS (ii) dated 24.1.1975.

This appeal by special leave is filed against the decision of the Central Administrative Tribunal dated August 5, 1986 declaring that rule 28(6) of the All India Services (Death–cum–Retirement Benefits) Rules, 1958 insofar as it tended to restrict pensioners to retirement benefits to which they were entitled on the date of their retirement and sought to deny them the benefits of the liberalised pension and

A gratuity in the amended Notification No. 33/12/73-AIS (ii) dated 24.1.1975 was violative of Article 16 of the Constitution of India and further directing that all the members of the All India Services would be entitled to liberalised pensionary benefits including *gratuity* as per the said notification irrespective of whether they had retired prior to 1.1.1973 or thereafter. The above decision was given by the Central B Administrative Tribunal, New Delhi in REGN No. T-853/85 (C.W. No. 2709/85) which was a petition filed by the All India Services Pensioners Association (Rajasthan) and one R.D. Mathur, an IAS Officer who had retired from service prior to 1.1.1973. The Union of India, the appellant herein, has not questioned the order of the Central Administrative Tribunal insofar as its liability to pay the pension in C accordance with the judgment of the Tribunal is concerned. This appeal by special leave is confined only to that part of the order of the Tribunal by which the Union of India is directed to pay gratuity in accordance with the aforesaid notification even to those members of the All India Services who had retired prior to 1.1.1973.

D The crucial point for consideration in this appeal is whether the members of a service who had retired prior to the date on which there is an upward revision of the gratuity on retirement to the members of such service would also be entitled to claim the difference between the gratuity payable to members of such service on such upward revision and the gratuity which had been actually paid to them on their retire- E ment, even though the Government order revising the gratuity does not either expressly or by necessary implication state that the members of the service who had retired earlier should also be paid gratuity at the revised rates because of the decision of this Court in *D.S. Nakara* v. *Union of India,* [1983] 2 S.C.R. 165. A similar question came up for consideration before this Court in the *State Government Pensioners* F *Association & Others* v. *State of Andhra Pradesh.*, [1986] 3 S.C.C. 501. The facts of that case are these. The Government of Andhra Pradesh by its Order G.O.Ms. No. 88 dated 26.3.1980 directed that retirement gratuity was payable to the officers to whom the said Government order was applicable as follows:

G > "Retirement gratuity may be 1/3rd of pay drawn at the time of retirement for every six monthly service subject to maximum of 20 months' pay limited to Rs.30,000."

The said order was made effective from April 1, 1978. The question which arose for consideration in some writ petitions filed in the H High Court of Andhra Pradesh was whether the pensioners who had

retired prior to 1.4.1978 would also be entitled to the payment of gratuity in accordance with the provision made in the aforesaid notification. The High Court of Andhra Pradesh held that the decision of this Court in *D.S. Nakara's* case (supra) was not applicable to the payment of gratuity and that pensioners who had retired prior to April 1, 1978 would not be entitled to claim the difference between the gratuity payable under the Government order and the gratuity which they had actually received at the time of their retirement. In the Special Leave Petitions filed before this Court against the said decision two of the learned Judges of this Court Thakkar and Ray, JJ. affirmed the view taken by the High Court of Andhra Pradesh and dismissed the petitions. In the course of their order the learned Judges observed as follows:

> "We fully concur with the view of the High Court. The upward revision of gratuity takes effect from the specified date (April 1, 1978) with prospective effect. The High Court has rightly understood and correctly applied the principle propounded by this Court in Nakara's case ..... An illustration will make it clear. Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent, and saved, on the basis of the then prevailing cost of living structure and pay-scale structure, cannot invoke Art. 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystalized on the date of retirement on the basis of the salary drawn by them on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision of gratuity amount can be made in har-

A mony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward revision. There is therfore no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf."

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When the above decision was brought to the notice of the Tribunal in the case out of which the present appeal arises the Tribunal declined to follow it and gave the following reasons for doing so:

"We must, however, observe that the Supreme Court in that case was dismissing Special Leave Petition (Civil) Nos. 14179 and 14180 of 1985 and was not disposing of an appeal. Further, the Supreme Court, in that case was considering the Andhra Pradesh Pension Rules and not rule 28(6) of the All India Services (Death-cum-Retirement Benefit) Rules, 1958 and the liberalisation pension scheme of Andhra Pradesh notified on 24.1.1985 and not the notification dated 24.1.1975 amending the All India Services (Death-cum-Retirement Benefit) Rules, 1958 with which we are now concerned in this application. Moreover, the Special Leave Petition against the Andhra Pradesh High Court's judgment was rejected by a Bench of two Judges while the judgment in V.P. Gautam's case which expressly dealt with Rule 28(6) and the liberalised pension scheme notified on 24.1.1975 in respect of Members of All India Services was the subject matter of an appeal before a bench of three judges of the Supreme Court. The relevant portion of the judgment of the High Court of Punjab and Haryana which must be deemed to have been affirmed by the three member Bench of the Supreme Court when it dismissed Civil Appeal Nos. 2738 and 2739 of 1985 on 12.2.1985 reads as follows:

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> In other words, the provisions of rule 28(6) of the retirement benefits rules, 1958 in so far as they were entitled on the date of their retirement and seeks to deny them liberalised pension under the amended rules referred to above which came into effect subsequent to that date are unconstitutional and are also accordingly struck down. It follows that the liberalised pensionary benefits including death-

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cum–retirement gratuity granted to pensioners by the amendment made in 1975 and 1979 shall be payable to all persons entitled to pensionary benefits under the Retirement benefits rules, 1958 irrespective of the date of the retirement from service.

It has been repeatedly laid down by the Supreme Court that the decision of the larger Bench prevails over the decision of the smaller benches vide *Ganapati Sitaram Balvalkar* v. *Waman Shripad Mage,* A.I.R. 1981 S.C. 1956; *Mattulala* v.*Radhe Lal,* A.I.R. 1974 S.C. 1596; *Union of India* v. *K.S. Subramanian,* A.I.R. 1976 S.C. 433. Even assuming that some aspects have not been taken into account by the Supreme Court, no Court or Tribunal of India can take a view different from that taken by the Supreme Court. As held by the Supreme Court in *T. Govindaraja Mudaliar* v. *State of Tamilnadu,* A.I.R. 1973 S.C. 974 "merely because the aspect presented in the present appeal was not expressly considered or a decision given, that will not take away the binding effect of those decisions of the Supreme Court." Vide *Somavanti* v. *State of Punjab,* A.I.R. 1963 S.C. 151.

It may be pertinent to note that even in the Andhra Pradesh State Government Pensions Association case the judgment in V.P. Gautam's was specifically referred to but the Supreme Court did not state that it was not correctly decided. Further, in all the above cases special leave applications were rejected following the principle laid down in *Nakara's* case. In *Gautam's* case the appeal filed by the Union of India was dismissed applying *Nakara's* case. In dealing with the claim of the other members of the All India Services who like V.P. Gautam had retired prior to 1.1.1973, we cannot hold otherwise in construing rule 28(6) in the context of the liberalised pension scheme of 1975,

The conflict if any must be resolved by the Supreme Court. We must follow the decision in *V.P. Gautam's* case which is directly in point."

With great respect to the Tribunal it should be stated that the way in which it has tried to ignore the decision of this Court in the *Andhra Pradesh State Government Pensioners Association's* case

A (supra) is not correct. In the above decision the two learned Judges, who decided that case have given reasons for not applying the rule in *D.S. Nakara's* case (supra) insofar as the liability of the Government to pay gratuity on retirement is concerned. The first ground relied on by the Tribunal not to follow the said decision is that it had been B rendered by this Court while dismissing some special leave petitions. This is a wholly untenable ground. The special leave petitions were not dismissed without reasons. This Court had given reasons for dismissing the special leave petitions. When such reasons are given the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. The second ground given by C the Tribunal is that the decision was one rendered in a case involving a notification issued by the Andhra Pradesh Government but not one touching the notification dated 24.1.1975 involved in this case. This is also not tenable. The Supreme Court was considering the question of applicability of the principle enunciated in *D.S. Nakara's,* case to the D case of gratuity. The views expressed by this Court should, therefore, apply to all cases of gratuity where similar features exist and it should apply to the present case too. If what the Tribunal has held is correct then *D.S. Nakaras* case will not be applicable to any order of pension passed by any State Government. That would indeed be a startling proposition with which we do not agree. As regards the third ground it E is no doubt true that the High Court of Punjab & Haryana in its decision in *V.P. Gautama* v. *Union of India and Ors.,* [1984] Labour and Industrial Cases 154 had observed that "it follows that the liberalised pensionary benefits including death-cum-retirement gratuity granted to pensioners by the amendment made in 1975 and 1979 shall be payable to all persons entitled to pensionary benefits under the F Retirement Benefits Rules, 1958 irrespective of the date of the retirement from service". But at the end of its decision the High Court passed the following order:

> "In the result, a writ of mandamus is issued to the Union of India and the other respondents directing them to G compute and pay pensionary benefits to the petitioner along with interest on the amounts becoming payable to him in terms of this order. The petitioner shall also be entitled to the costs of this petition."

When the Special Leave Petition was filed against the said decision this Court passed the following order: H

"Special leave to appeal was confined only to two questions (1) whether the enhanced pension under the liberalised pension scheme was payable with effect from 1st October, 1974 and (2) whether the High Court had any jurisdiction to award interest at 12% per annum. So far as the first question is concerned, it is fully covered by *D.S. Nakara & Ors.* v. *Union of India*. We are not inclined to go into the second question in the present appeals. The appeals are therefore, dismissed. No costs."

The above decision was rendered by a bench of three Judges of which one of us was a member. It is seen from the above order that there is no reference to the liability of the Union of India and the State of Haryana to pay the gratuity to the pensioner who was involved in that case. The first question considered related to the payment of enhanced pension. It is not known whether the question relating to gratuity was pressed before this Court or not. There is no reference to the liability to pay gratuity in the said order. The only point considered by this Court by the above order was the point involved in question No. 1, referred to therein, namely, whether the enhanced pension under the liberalised pension scheme was payable with effect from 1st October, 1974 and insofar as that question was concerned, the view taken by the High Court of Punjab & Haryana was affirmed. It may be that the decision of the High Court of Punjab and Haryana may be binding on the parties to that petition as *res judicata*. But the above order of this Court cannot be considered as a precedent under Article 141 of the Constitution to hold that the liability to pay gratuity was also governed by the decision in *D.S. Nakara's* case. It may be pointed out that in *M.L. Abhyankar and Others etc.* v. *Union of India,* (Writ Petition (Civil) Nos. 3531–34 of 1983 and connected cases decided on April 24, 1984) a bench of three Judges of this Court, which consisted of two of the Judges who dismissed the appeal filed against the judgment of the High Court of Punjab & Haryana referred to above, has observed thus:

"In view of our decision in *D.S. Nakara* v. *Union of India,* [1983] 1 SCC 305 and for the reasons mentioned by the Allahabad High Court in Writ Petition No. 3201 of 1979 dated 2/3/1983 in the case of *Bidhubhushan Malik and others* v. *Union of India* which we have accepted as correct in Special Leave Petition No. 9616 of 1983 just now dismissed by us we allow the writ petitions. The judges of the High Court and of the Supreme Court will be entitled to the pensionary benefits under the amended Act of 1973

A irrespective of the dates of their retirement. They will be so entitled with effect from 1.10.1974. Arrears of pension calculated under the provision of the new Act will be paid to those to whom it is due within four months from today. In the case of Judges who have died after 1.10.1974 the amounts due will be paid to the legal heirs of the Judges
B within four months from today. The family pension due to the widows will be calculated under the provisions of the 1976 Amending Act and paid to them. Ad–hoc payments made, if any, will be adjusted while making such payments. The writ petitions are disposed of accordingly. *What we have said about pensionary benefits does not apply to pay-*
C *ment of gratuity."*

(underlining by us)

From the foregoing it is clear that this Court has made a distinction between the pension payable on retirement and the gratuity payable on retirement. While pension is payable periodically as long as
D the pensioner is alive, gratuity is ordinarily paid only once on retirement. No other decision of this Court which has taken a view contrary to the decision of Thakkar and Ray, JJ. in the *Andhra Pradesh State Government Pensioners Association's* case (supra) and to the decision in *M.L. Abhyankar's* case (supra) has been brought to our notice. The observations made in these two cases are binding on us insofaras the
E applicability of the rule in *D.S. Nakara's* case (supra) to the liability of the Government to pay gratuity on retirement. We respectfully agree with the views expressed in those decisions. It is also not shown that the Government notification in question either expressly or by necessary implication directs that those who had retired prior to 1.1.1973 would be entitled to any additional amount by way of gratuity. The
F Tribunal was, therefore, in error in upholding that gratuity was payable in accordance with the Government Notification No. 33/12/73-AIS(ii) dated 24.1.1975 to all those members of the All India Services who had retired prior to 1.1.1973.

The Judgment of the Tribunal is set aside to the extent indicated above. We make a declaration that the members of the All India
G services who had retired prior to 1.1.1973 are not entitled to claim gratuity on the basis of the Notification referred to above.

The appeal is allowed to the above extent. There will be no order as to costs.

N.V.K. Appeal allowed.