A STATE OF HARYANA AND ORS.

v.

D.L. UPPAL

JANUARY 19, 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Service Law :

Pensionary benefits—Payment of—Delay in—High Court ordering payment of gratuity and pension on the basis of emoluments last drawn—Subject to final decision regarding scale of pay—Interest also allowed—Held : Since matter regarding scale of pay pending in High Court, State Govt. could not fix the pension—High Court's order regarding payment of gratuity and pension with interest reversed—State Government directed to compute pension on the undisputed scale and pay the same within two months subject to the decision in pending cases—Gratuity to be paid within four weeks.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2856 of 1996.

From the Judgment and Order dated 25.7.94 of the Punjab & Haryana High Court in C.W.P. No. 8687 of 1994.

Ms. Nisha Bagchi for Ms. Indu Malhotra for the Appellants.

Pankaj Kalra and Beldev Krishan for the Respondent.

The following Order of the Court was delivered :

Leave granted.

We have heard counsel on both sides. This appeal by special leave arises from the order of the Division Bench of the Punjab & Haryana High Court made in C.W.P. No. 8687 of 1994 on July 25, 1994. The respondent had retired on January 31, 1994 and he claimed his pension and since his pension has not been paid, he invoked the jurisdiction of the High Court. In the impugned order, the High Court has directed to pay to the respondent the gratuity with 12% interest thereon within one month from the date of judgment. It further directed to determine the pension of the respondent on the basis of the emoluments last drawn by him which would be subject

to the final decision that may be made in regard to the actual scale of pay to which he is eligible and on the basis of which pension may be computed. Arrears paid would be adjustable thereafter. Accordingly, direction was given to pay the pension with interest at the rate of 12% p.a. Thus, this appeal by special leave.

We issued notice only to see that when the dispute as regards the computation of pension is pending, how the liability could be fastened with interest for non-fixation of the pension. Mr. Pankaj Kalra, learned counsel appearing for the respondent has stated that the respondent's entitlement is to be computed on the basis of last drawn scale of pay as found by the High Court which would be adjusted after the fixation of pay. According to the learned counsel, even fixation of pay has been correctly done. Therefore, there is inaction on the part of the State in computing the pension payable to the respondent. He further contends that persons similarly situated are being paid pension while the same is being denied to the respondent. It is contended by the appellants that the scale of pay was provisionally fixed and this is the matter under consideration. Until it is decided, the State is unable to determine the pension payable to the respondent. Under these circumstances, there is no slackness on the part of the State in determining the pension payable to the respondent.

Having considered the respective contentions, we are of the view that the High Court's view is not correct. So long as the scale of pay to which the respondent is entitled has not been determined, necessarily the State Government cannot fix the pension and that is the matter now pending decision in the High Court. No doubt, specifically no reference is made to the respondent before fixing the scale of pay and the action of the other subordinates has been impugned by the State.

Under these circumstances, the order of the High Court is reversed. The appellants are directed to compute the pension on the undisputed scale of pay and pay the same within a period of two months from the date of decision. It would be subject to the decision in the pending cases. The State is directed to decide within six weeks from the date of receipt of a copy of this order. The State is also directed to release the gratuity payable to the respondent within four weeks from today.

The appeal is allowed. No costs.

G.N. Appeal allowed.