

Supreme Court of India

State Of Haryana And Another vs O.P. Sharma And Others on 17 February, 1993

Equivalent citations: AIR 1993 SC 1903, JT 1993 (2) SC 221, (1993) ILLJ 457 SC, 1993 (1) SCALE 731, 1993 Supp (2) SCC 386, (1993) 3 UPLBEC 2002

Bench: A Ahmadi, N Kasliwal

ORDER

1. Delay in Special Leave Petitions is condoned.

2. The Government of Haryana passed orders in June 1972 for the grant of first and second instalments of ad-hoc relief to its employees w.e.f. 1st April, 1972 at varying rates on the account of the rise in the cost of living. The third instalment of ad-hoc relief was released w.e.f. 1st December, 1972 under Government Order dated 19th December, 1972. The question of grant of regular additional dearness allowance to the employees was under consideration for sometime past. By Government Order dated 20th March, 1974, the State of Haryana decided to grant additional dearness allowance to its employees w.e.f. 1st June, 1973, 1st September, 1973, 1st October, 1973 and 1st January, 1974 at the rates indicated in the table appended to the said order. The additional dearness allowance was to be calculated on the emoluments comprising pay, dearness allowance and the two ad-hoc reliefs abovementioned. It was further provided that while making payments of additional dearness allowance, a part of the amount of the ad-hoc reliefs earlier granted shall be adjusted as set out in columns 5 & 7 of Annexure I to the said Government Order. Such a deduction was also made from the emoluments payable to the college teachers. Thereupon, a Civil Writ Petition No. 966 of 1988 came to be filed in the High Court of Punjab & Haryana challenging the deduction made from the emoluments of the college teachers. That Writ Petition and similar other Writ Petitions were allowed by a Division Bench of the High Court on 18th July, 1988. The High Court held that the deduction of Rs. 45 per month made from the emoluments of the college teachers was illegal and directed a refund of the amount for the period of three years and two months immediately preceding the date of filing of the Writ Petitions and restrained the State Government and other concerned authorities from deducting the said amount from salary paid in future. Subsequently, in the case of Nitya Nand and Ors. v. State of Haryana and Ors. (Civil Writ Petition No. 5563-A of 1989) the High Court relying on the aforesaid decision in the case of college teachers disposed of the Writ Petition on the same terms. A spate of Writ Petitions came to be filed thereafter by other employees of the State Government and these too were allowed on the basis of the decision in Nitya Nand's case. Some of these have given rise to Civil Appeals Nos. 53-60 of 1992. It may here be mentioned that against the decision of the High Court in the College Teachers' case Special Leave Petitions Nos. 3695, 3572 and 3574 were filed but these were withdrawn on 12th January, 1993 for the reason which we shall point out hereafter. In subsequent Writ Petitions which came to be filed in the High Court the State government pointed out that an error had crept in while disposing of Nitya Nand's petition on the basis of the judgment in the College Teachers' case. When the said group of Writ Petitions came up for hearing before a Division Bench comprising the Acting Chief Justice and J.L. Gupta, J. the petitioners were directed to make a comprehensive representation to the Government and the latter was directed to examine the same and dispose it of by a speaking order. The said representation was rejected by a speaking order broadly on the following grounds:

1. There is no legal or vested right to get a particular quantum of dearness allowance.
2. The ad-hoc reliefs were granted in year 1972 without adopting any formula 'with reference to the cost of living'.
3. Vide letter dated March 20, 1974, the additional dearness allowance was granted on every 8 point increase in the Consumer Price Index. The ad-hoc relief given earlier on a slab system without reference to any formula was found to be higher than what, was permissible on the basis of Consumer Price Index formula.
4. On the basis of calculations it was found that the dearness allowance granted by way of ad-hoc relief was in excess to the extent of Rs. 9.40 to Rs. 45 in various categories of pay slabs when compared with the admissible dearness allowance as per Consumer Price Index. As a principle, it was not considered desirable to reduce the emoluments or to recover the excess amount drawn by the employees. It was decided that the additional dearness allowance would only accrue after the adjustment of the excess ad-hoc relief already granted.

A detailed replication was filed against the said order. The Division Bench of the High Court considered the same and came to the conclusion that factually the ad-hoc relief granted in 1972 was ad-hoc, pure and simple, and was in excess of the additional dearness allowance worked out on the cycle of every 8 points rise in the Consumer Price Index. The High Court, therefore, felt that the State Government was well within its right to adjust the excess amount drawn by the employees towards future installments of additional dearness allowance and such adjustment could not be ruled as unfair, arbitrary or in violation of law. In regard to the decision in Nitya Nand's case based on the decision in the College Teachers' case, the High Court pointed out that the adjustment of ad-hoc relief made in the case of College Teachers was wholly unjustified for the reason that College Teachers were in fact not granted any ad-hoc relief under the State Government's Order of 1972. Consequently, in their case, the question of adjustment of excess payment did not arise and, therefore, the High Court was justified in striking down the deduction made on the erroneous assumption of excess payment. The High Court pointed out that this aspect of the matter had escaped the attention of the Court in Nitya Hand's case. Even the State Government having realised its mistake in deducting the excess quantum of ad-hoc relief from the additional dearness allowance payable to College Teachers decided to withdraw the Special Leave Petitions Nos. 3695, 3572 and 3574 of 1992. It is, therefore, obvious that the case of College Teachers turned on this special fact and could not have been treated as an authority or an analogy for deciding the case of other Government servants like Nitya Nand who had in fact received the benefit of interim relief under the 1972 orders. The High Court, therefore, did not consider the College Teachers' case and Nitya Nand's case as binding precedents to be followed in the batch of Writ Petitions which came up for decision before it on 18th September, 1991. The Division Bench of the High Court, therefore, dismissed the Writ Petitions upholding the Government Order of 20th March, 1974,

3. As stated earlier, the State Government realised the mistake it had committed in the College Teachers' case and, therefore, withdrew the Special. Leave Petitions filed against the judgment rendered in their case. The decision in Nitya Nand's case was based on the decision in the College

Teachers' case without realising that Nitya Nand and other Government servants had in fact been the beneficiaries of the interim relief granted in 1972 unlike the College Teachers. No other reason was given in Nitya Nand's case for striking down the relevant Government Order. When the other batch of cases came up before another Division Bench of which G.C. Mittal, J. was a member, who was also a member of the Bench which decided the College Teachers' case, it was realised that the factual position was not identical and, therefore, the petitioners were directed to make a comprehensive representation to the State Government for its consideration. The State Government was also directed to dispose of the said representation by a speaking order. When the order giving reasons for negating the contention of the employees was placed before the Division Bench it appreciated the stand of the State Government since the factual premise in the case of College Teachers was altogether different from the factual premise in the case of other Government servants who had actually received the ad-hoc interim relief. The High Court, therefore, rightly came to the conclusion that the ratio of the College Teachers' case was not applicable to the case of those Government servants who were the recipients of ad-hoc interim relief. Since the interim relief granted in 1972 was not based on any formula but was totally ad-hoc, when the formula for the grant of additional dearness allowance of the cycle of increase by 8 points in the Consumer Price Index was adopted by the State Government, the State Government realised that the ad-hoc interim relief was in excess by Rs. 9.40 to Rs. 45 per month depending on the pay-slab of a Government servant and, therefore, decided to adjust the increase rather than order lump sum recovery of the excess amount. Such an order passed by the State Government to recover the excess amount in a phased manner can never be termed as arbitrary, unreasonable, unfair or illegal. The High Court was, therefore, right in refusing to follow the decision in Nitya Nand's case in the subsequent Writ Petitions which were filed by various groups of Government employees who had benefited from the interim ad-hoc relief. In view of the above, we are of the opinion that Civil Appeals Nos. 53-60 of 1992 must be allowed and the order passed by the High Court must be reversed. There will be no order as to costs throughout. The Special Leave Petitions filed by the employees against the subsequent order of the High Court upholding the impugned order of 20th March, 1974 must fail and are rejected.

4. Before parting with the case, we must mention that counsel for the employees made a grievance that the State Government had recovered much more than what it had paid by way of excess ad-hoc relief. Mr. Kapil Sibal, the learned Senior Counsel, appearing for the State of Haryana with his usual fairness submitted that the deduction to be made from the additional dearness allowance cannot be in excess of the excess ad-hoc interim relief recoverable from the employees and if in any case excess amount has been recovered the State Government will refund the same if such instances are brought to its notice. He also conceded that the deduction being made from the additional dearness allowance on the basis of excess payment of ad-hoc interim relief must cease the moment the recovery of the excess amount is completed. In view of this statement made by Mr. Sibal we will leave it to the employees to point out to the State Government specific cases in which recovery is made which is in excess of what the State Government was entitled to recover, namely, the excess amount of ad-hoc interim relief i.e. payment made in excess of the additional dearness allowance admissible to the employees. Similarly, if the recovery of the excess payment of ad-hoc relief has been fully realised and yet the State Government is found to be adjusting the same from future additional dearness allowance, the same too may be brought to the notice of the State Government

which will rectify the error, if any.