

JUDGEMENT

The contentions raised in these applications are similar, and so are the reliefs claimed. Counsel appearing on both sides say so. These applications are therefore disposed of, by a common judgement.

2. The question arising for consideration is whether the applicants are entitled to receive 'relief' (dearness allowance) on that part of the pension, which is not counted for fixing pay, on reemployment. According to applicants, they are entitled. They rely on a decision of a Full Bench of this Tribunal in TAK-732/87 to support their contention. On the contrary, Respondents would submit that the judgment in TAK-732/87 is not in operation, by reason of an interim order issued in S.L.P. 117/90 by the Supreme Court of India in a petition for leave to appeal.

3. The question that comes into sharp focus is, whether an interim order made by the Supreme Court of India in a petition for special leave to appeal divests a decision made by a Court or Tribunal of competent jurisdiction of its force. Applicants would submit that an interim order would not bring about such a result. Shri Sivan Pillai appearing for some of the applicants, relied on the decision of the Tribunal in Ganga Ram and others vs. Union of India and others, (1989-1991 ATC, Full Bench Cases, Vol.II,441), to contend that an order of the Supreme Court, will not affect the operation of an order made by a Court, unless it is a reasoned order. It would be more precise to say, that only an order that is a declaration of law, would override a decision of a Court or Tribunal. It is a principle of vintage that a decision rendered by a Court of competent jurisdiction would be in force, until it is set aside. In Darya and others v. State of U.P., (AIR 1961 SC 1457), a Constitution Bench of the Supreme Court, considered the effect of a judgment rendered by a Court of competent jurisdiction. The

Court said:

"The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of administration of justice on which the Constitution lays so much emphasis.... a decision pronounced by a Court of competent jurisdiction is binding between the parties unless it is modified or reversed a decision would continue to bind the parties, unless it is modified or reversed by appeal or other appropriate proceedings permissible under the Constitution."(emphasis supplied)

4. A judgment or order may be challenged in appeal, revision by invoking visitatorial jurisdiction or by the constitutional process of special leave. Challenge, ipso facto, will not divest the legal effect or binding character of a decision rendered by a Court or Tribunal of competent jurisdiction. It will remain in force until, it is set aside, as aforesaid. As long as that does not happen, so long, the judgment or order would remain in full force. It is fundamental to a system rooted in the rule of law, that a decision rendered by a competent Tribunal or Court should remain in its full effect, unless a superior forum modifies or reverses it, in a manner permitted by law. An interim order in an appeal against a judgment or order will not affect the operation of the legal principle upon which the decision is rendered, though the interim order would suspend the effect of the order as far as the parties to it are concerned.

5. Decisions of the Supreme Court illustrate, the nature of the exercise involved in an interlocutory order. In Nawab Sir.Mirza Osman Ali v. Commissioner of Wealth Tax, (AIR 1987 SC 522), the apex Court held that dismissal of a Special Leave Petition, will not be an affirmation of the principle of law in the judgment against

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which leave was refused. Nor will, grant of special leave lead to reversal of the principle of law enunciated in the decision challenged. A decision acquires the force of Article 141 of the Constitution, only when a declaration of law is made. In Dalbir Singh vs. State of Punjab, (AIR 1979 SC 1384), the Court observed that principles of law on which a decision is rendered by the Court is the declaration of law, and not the decision on facts. The former falls in the sweep of Article 141 and binds every Tribunal and Court, while the latter binds only the parties to the lis. To the same effect is the decision in Supreme Court Employees Welfare Association v. Union of India, (AIR 1990 SC 334). The Court reaffirmed the statement of law in Darya's case (AIR 1961 SC 1457) and reiterated that Article 141 of the Constitution would be attracted, only when a declaration of law is made by the Supreme Court. A situation analogous to that in the decisions cited, arose in Alpana V. Mehta vs. M.S.B. of Secondary Education, (AIR 1984 SC 1827). The High Court after allowing some writ applications, dismissed a subsequent but similar writ application, on the ground that Special Leave was granted by the Supreme Court against the earlier judgment. The Supreme Court found that the High Court had erred in doing this. The High Court ignored its own precedent, because of the pendency of a Special Leave petition. The decision in Alpana Mehta also supports the view that pendency of an application for special leave does not affect the principle of law laid down in the decision under challenge.

6. A decision rendered by a competent Court remains in full force, unless and until it is modified or set aside by a superior forum, in an appeal or in a process sanctioned by the Constitution. It follows that the principle of law laid down in TAK-732/87 remains in full force. The Supreme Court has only stayed the consequences

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that follow from the decision, as far as the parties thereto are concerned. It was also brought to my notice that the Supreme Court had dismissed S.L.P. 4881/91 against O.A.176/90(Union of India v. N.Natarajan), where a view similar to the view in T.A.K.732/87, was taken by this Tribunal.

7. Shri C.N.Radhakrishnan, learned counsel appearing for the Union of India, as also the other learned counsel appearing for respondents, submitted that implementation of the rule in T.A.K.732/87 would make a dent into the exchequer defeating public interest. I have bestowed anxious consideration on this submission. Public interest would at once, comprehend interest of the exchequer, and interests of pensioners. Entitlement to pension, (which is a deferred payment) earned by applicants over long years must also enter consideration, while deciding how best public interest is served. Considering the totality of facts, respondents are directed to pay that part of the relief/dearness allowance withheld from the applicants as well as relief/dearness allowance arising in future and due to applicants. Arrears till date payable to applicants will be deposited in the provident fund accounts in the case of employees who subscribe to such a fund. To employees who do not subscribe to a provident fund, arrears will be paid within six months from today, in two equal instalments. Relief, or dearness allowance on pension, becoming due in future will be paid to applicants at the time of paying the pension for the relatable month. In the event of the order in T.A.K.732/87 being upheld by the Supreme Court, the amounts aforesaid, paid into the provident fund, will be disbursed to the applicants, if they so desire. On the contrary if the order in T.A.K. 732/87 is set aside, applicants will return the amounts received by them, by reason of this order to the respondents. The applications are allowed, as indicated hereinbefore. Parties will bear their costs.

Dated the 23rd July, 1993.

Chettur Sankaran Nair
Chettur Sankaran Nair(J)
Vice Chairman