

(1997) 02 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 289 of 1992

Accountant General of A.P. and Another

APPELLANT

Vs

S. Obul Reddi and Another

RESPONDENT

Date of Decision : 05-02-1997

Acts Referred:

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 16

Citation : (1997) 3 ALT 433

Hon'ble Judges : P.S. Mishra, C.J.;D.H. Nasir, J

Bench : Division Bench

Advocate : A. Chaya Devi, Addl. SC, for the Appellant; K. Subramanya Reddy and GP for Home, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Mishra, C.J.—The Accountant General of Andhra Pradesh, Hyderabad and the Union of India have appealed under Clause 15 of the Letters Patent of this Court against the judgment declaring entitlement of a retired Judge, whose case falls for calculation of pension in accordance with the provisions in Part III of the High Court Judges (Conditions of Service) Act, 1954 as amended from time to time. It is not in dispute that after retirement the petitioner - respondent received the benefit of the order of the President u/s 16 of the Act and received pension until after the amendment with effect from 1-11-1986. He opted for the pension as a Part III Judge. There were several controversies before the learned single Judge, which are, we are informed, settled, except the contention whether for the purpose of a special additional pension for service Judges in respect of the last year of service, the benefit of the order of the President shall not be available. Learned single Judge on the said point has held as follows :

"The contention of the counsel for the petitioner is that denial of "special additional pension" for service Judges in respect of the last year of service by virtue of the proviso to Section 16 of the Act is arbitrary and discriminatory after the amendment of 1986. Various arguments have been advanced in support of

the contention and reliance was placed on the decision reported in Deoki Nandan Agarwala Vs. Union of India (UOI), . In my opinion, the ratio of that decision does not help in resolving the present controversy.

Some undisputed facts have to be noticed before considering the controversy raised under this point. From the dates already mentioned, the petitioner's actual service for the purpose of special additional pension is as follows :

Y M D As High Court Judge 7 10 22 As Chief Justice 3 10 8 -----
Total Service: 11 9 0 -----

The President of India has given the benefit of service of three months as contemplated by Section 16 of the Act. It is not in dispute that the benefit of three months for computing the last 9 months as one completed year has been given for determining the basic pension under para 2(a) of Part III of First Schedule. It was being given while the petitioner was receiving his pension under Part I. In view of definition of a "Judge" u/s 2(g) of the Act and of "pension" u/s 2(gg) the total service for the purpose of "special additional pension" for a Judge will include the period of service as Chief Justice. Para 2 of Part III of the Act is already extracted earlier. Section 16 reads as follows :

"16. Power of President to add to the service for pension:

The President of India may for special reasons direct that any period not exceeding three months shall be added to the service for pension of a Judge:

Provided that the period so added shall be discharged in calculating any additional pension under Part I or Part II or Part III of the First Schedule".

After the amendments with effect from 1-11-1986, an identical ceiling on pension is introduced on the pension payable to Judges under Part I and Part III though there was no such identical ceiling earlier. Prior to 1-11-1986 Part I Judge received a basic pension and an additional pension while a Part III Judge received a basic pension and special additional pension and the ceiling on their total pension were also different. After 1-11-1986 no additional pension is payable to Part I Judges. The result is that the proviso to Section 16 will not have any application to Part I Judges, as they do not receive additional pension but will only apply to service Judges, who continue to receive special additional pension. After 1-11-1986, the inner ceiling on the special additional pension for Part III Judges has been already held to be bad by the Supreme Court in the third ML. Jain's case (3 supra) and accepted by the Government. This is because of an identical ceiling on pension imposed on both Part I and Part III Judges. After the amendment of the Act from 1-11-1986, the proviso to Section 16 will have the effect of denying the special additional pension for the last year of service in respect of service Judges, even if their pension does not exceed the ceiling. The order u/s 16 enables the period of short-fall in actual service upto a maximum of three months to be computed for treating the last completed year for the purpose of pension. To my mind, such a restriction in respect of special

additional pension for service Judges only after 1-11-1986 will be discriminatory and arbitrary. A ceiling on total pension is already provided by the Act which is identical for Part I Judges and Part III Judges. The petitioner's pension does not exceed the ceiling under the Act. The reasons given in the third M.L. Jain Vs. Union of India, will also take us to this conclusion. The proviso to Section 16, therefore, will result in denial of special additional pension to a service Judge in respect of the benefit given u/s 16 of the Act. It is hoped that the Union Government and the Parliament take a fresh look at the scheme of pension under the Act to avoid complaints of discrimination after the Amendments made with effect from 1-11-1986, as the decisions of the Supreme Court have already been accepted by the Government. Point No. 4 is answered accordingly."

2. It is urged on behalf of the appellant that the order of the President, no doubt, would benefit any Judge to calculate for the pension "completed year of service" if the last year has fallen short by three months, but in case of additional pension, the period so added shall be disregarded. This obviously means that in addition to the pension any Part III Judge would receive, for the service rendered by him, before he became a Judge of the Court, the basic pension besides such pension to which he is entitled as a Judge of the High Court, except additional pension which he shall receive minus the three months period which is available to him only under the order of the President of India. We do not propose in this appeal to reiterate afresh the view taken by the learned single Judge, who has rightly noticed the anomaly, which is created on account of ceiling on pension, which would be applicable to both Part I as well as Part III Judges. If, in the case of Part III Judges, the proviso is interpreted to deny the benefit of the additional pay for a full year in spite of the President Order. We appreciate the concern of the appellants that interpretation of law in this behalf might, in a given situation, be found almost rendering the proviso inoperative. At the same time, we do appreciate the concern of the petitioner and the view taken by the learned single Judge that when pension is granted and a method calculating the same is introduced, there should be no application of ceiling both ways i.e. (1) the limit above which no pension accrues and (2) the limit which fixed for such pension by fictional addition of the period, which is not more than three months with the order of the President in the last year of the service of the Judge, whether falling in Part I or Part III. We express our agreement with the view of the learned single Judge and we do so. We do not traverse over and over again into the various aspects of the above rule.

3. There is no merit in the appeal. The appeal is dismissed.