

**(2016) 07 SC CK 0014**

**In the Supreme Court Of India**

**Case No :** I.A. No. 17 in I.A. No. 244 of 2009, I.A. Nos. 1 & 2 in I.A. No. 17 in I.A. No. 244 of 2009, I.A. Nos. 334, 336, 338, 339, 342, 343, 344, 345 of 2016 in Writ Petition (Civil) No. 1022 of 1989

All India Judges Asson. & Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

**Date of Decision :** 14-07-2016

**Acts Referred:**

**Citation :** (2016) 7 Scale 437

**Hon'ble Judges :** Mr. Fakkir Mohamed Ibrahim Kalifulla and Mr. Uday Umesh Lalit, JJ.

**Bench :** Division Bench

**Advocate :** Mr. P.P. Rao, Sr. Advocate, Mrs. M.V. Rama, Mrs. Anjani Aiyagari, Advocates, Mr. Abhijit Sengupta, AOR, Mr. A.T.M. Sampath, AOR, Mr. T.S. Shanthi, Advocate, Mr. A. Venayagam Balan, AOR, Mr. Bharat Sangal, AOR, Ms. Vidushi Garg, Ms. Daggar Malhotra, Advocates, Mr. Pravir Kumar Jain, AOR, Mr. Rakesh Dahiya, AOR, Mrs. Amita Gupta, AOR and Mr. S.N. Bhat, AOR, for the Appellant; Mr. Dusyant Dave, Mr. H.A. Ahmadi, Sr. Advocates, Mr. Vivek Mishra, Mr. Rajeev Sharma, Mr. Ajay Sharma, Mr. S.S. Pillaniya, Advocates, Dr. Sushil Balwada, AOR, Mr. Abhishek Atrey, Mr. Srilok Nath, Mr. Dinesh Minocha, Advocates, Mr. Suryanarayana Singh, AAG, Ms. Pragati Neekhara, Advocate, Dr. J.P. Dhanda, AOR, Dr. Kailash Chand, AOR, Mr. Irshad Ahmad, AAG, Ms. Archana Singh, Advocate, Mr. Abhish Kumar, AOR, Mr. Ajay Sharma, AOR, Mr. Ajit Pudussery, AOR, Mr. Alok Kumar, AOR, Mr. A. Sharan, Sr. Advocate, Mr. Amit Kumar, AOR, Mr. Shaurya Sahay, Mr. Avijit Mani Tripathi, Mr. Prithvi Pal, Mr. Manish, Advocates, Mr. Anil Nag, AOR, Mr. Anil Shrivastav, AOR, Mr. Anip Sachthey, AOR, Mr. Aniruddha P. Mayee, AOR, Mr. A. Selvin Raja, Mr. A. Subba Rao, Advocates, Mr. Annam D.N. Rao, AOR, Mr. Sudipto Sircar, Ms. Ankita Chadha, Mr. K.L.D.S. Vinober, Mr. Annam Venkatesh, Advocates, Mr. Anupam Lal Das, AOR, Mr. Aruneshwar Gupta, AOR, Mr. Arun K. Sinha, AOR, Mr. Arup Banerjee, AOR, Mr. Ashok K. Srivastava, AOR, Mr. Sapam Biswajit Meitei, Mr. Naresh Kumar Gaur, Ms. Linthoingambi Thongam, Mr. Z.H. Haiping, Advocates, Mr. Ashok Kumar Singh, AOR, Mr. Ashok Mathur, AOR, Mr. B.D. Sharma, AOR, Mr. B.S. Banthia, AOR, Mr. Chander Shekhar Ashri, AOR, Mr. C.N. Sree Kumar, AOR, Mr. Dharmendra Kumar Sinha, AOR, Mr. D.N. Goburdhan, AOR, Ms. Pallavi Chopra, Ms. Sunita Sharma, Mr. S.S. Rawat, Advocates, Mr. D.S. Mahra, AOR, Ms. Gunwant Dara, Mr. Harish K., Advocates, Mr. Gopal Balwant Sathe, AOR, Mr. Gopal Singh, AOR, Mr. Manish Kumar, Mr. Shivam Singh, Mr. Rituraj Biswas, Ms.

Varsha Poddar, Advocates, Mr. G. Prakash, AOR, Mr. Jishnu M.L., Mrs. Priyanka Prakash, Ms. Beena Prakash, Advocates, Mr. Guntur Prabhakar, AOR, Mr. Haresh Raichura, AOR, Mr. Jitendra Mohan Sharma, AOR, Mr. Ashok Kumar Juneja, Mr. Vijendra Kasana, Mr. Kamal Mohan Gupta, AOR, Mr. Kanhaiya Priyadarshi, AOR, Mr. Khwairakpam Nobin Singh, AOR, Mr. Kishan Datta, AOR, Mr. K. Ram Kumar, AOR, Mr. Krishnanand Pandeya, AOR, Mr. K.R. Sasiprabhu, AOR, Mr. L.K. Pandey, AOR, Mr. Basava Prabhu S. Patil, Sr. Advocate, Mr. Durga Dutt, Mr. P.R. Bahl, Mr. H.P. Sahu, Mr. Chinmaya, Advocates, Mr. M.A. Chinnasamy, AOR, Mr. Ravi C. Prakash, Advocate, Mr. M.A. Krishna Moorthy, AOR, Mr. Manish K. Bishnoi, AOR, Mr. Mukesh K. Giri, AOR, Mr. M. Veerappa, AOR, Mr. Naresh K. Sharma, AOR, Mr. Soumitra G. Chaudhuri, Advocate, Mr. Parijat Sinha, AOR, Mr. Kshatrshal Raj, Advocate For M/s. Parekh & Co., Mr. P.I. Jose, AOR, Mr. Nitin K. Singh, Mr. Vinodkumar K., Advocates, Mr. P.K. Jain, AOR, Mr. P. Parmeswaran, AOR, Mr. Pradeep Misra, AOR, Mr. Prasanth P., AOR, Mr. Prashant Kumar, AOR, Mr. Praveen Swarup, AOR, Mr. Pravir Choudhary, AOR, Mr. P.V. Dinesh, AOR, Mr. Ravi Kant Pal, Mr. Pragyan Sharma, Advocates, Mr. P.V. Yogeswaran, AOR, Mr. Radha Shyam Jena, AOR, Mr. Rajesh Kumar, AOR, Mr. Rajesh Srivastava, AOR, Mr. Rajiv Mehta, AOR, Mr. Raj Kumar Mehta, AOR, Mr. Rakesh K. Sharma, AOR, Mr. Ranjan Mukherjee, AOR, Mr. Rashmikumar Manilal Vithlani, AOR, Mr. Ratan Kumar Choudhuri, AOR, Mr. Ravi Prakash Mehrotra, AOR, Mr. R.D. Upadhyay, AOR, Mr. R.N. Keshwani, AOR, Mr. Romy Chacko, AOR, Mr. R. Sathish, AOR, Mrs. Anil Katiyar, AOR, Mrs. Anjani Aiyagari, AOR, Mr. Sanjay Jain, AOR, Mr. Sanjay Parikh, AOR, Mr. Sanjay Sharawat, AOR, Mr. Jaideep Gupta, Sr. Advocate, Mr. Raja Chatterjee, Ms. Runa Bhuyan, Mr. Adeel Ahmed, Advocates, Mr. Satish Kumar, AOR, Mrs. D. Bharathi Reddy, AOR, Mr. Shree Prakash Sinha, Mr. Rakesh Mishra, Ms. Madhu Sinha, Advocates, Mr. Shekhar Kumar, AOR, Mr. Shrish Kumar Misra, AOR, Mr. S.K. Bhattacharya, AOR, Mrs. Revathy Raghavan, AOR, Mr. S.R. Setia, AOR, Mr. Sunil Fernandes, AOR, Ms. Astha Sharma, Ms. Mithu Jain, Mr. Puneeth K.G., Advocates, Mr. Sunil Kumar Jain, AOR, Mr. Surya Kant, AOR, Mrs V.D. Khanna, AOR, Mr. Tara Chandra Sharma, AOR, Mr. T.G. Narayanan Nair, AOR, Mr. T. Harish Kumar, AOR, Mr. T.L. Garg, AOR, Mr. T. Mahipal, AOR, Mr. T.V. George, AOR, Mr. R. Venkataramani, Sr. Advocate, Mr. V.G. Pragasam, AOR, Mr. S. Prabu R., Advocate, Mr. Vishwajit Singh, AOR, Mr. V.K. Sidharthan, AOR. Mr. V.N. Raghupathy, AOR, Ms. Anagha S. Desai, AOR, Ms. Anitha Shenoy, AOR, Ms. Aruna Mathur, Mr. Yusuf Khan, Mr. Anuradha Arputham, Mr. Avneesh Arputham, Advocates For M/s Arputham Aruna & Co., Ms. Asha Gopalan Nair, AOR, Ms. A. Subhashini, AOR, Ms. A. Sumathi, AOR, Ms. Bina Gupta, AOR, M/s Corporate Law Group, AOR, M/s Gagrut & Co., AOR, Ms. Hemantika Wahi, AOR, Ms. Kamini Jaiswal, AOR, Ms. Kaveeta Wadia, AOR, Ms. Kumud Lata Das, AOR, M/s. Lawyer S Knit & Co, AOR, Ms. Meera Mathur, AOR, Ms. N. Annapoorani, AOR, M/s. Parekh & Co., AOR, Ms. Rachana Srivastava, AOR, Ms. S. Janani, AOR, Mr. K.V. Jagdishvaran, Mrs. G. Indira, Mr. Balasubramanian, Mr. Ratan Kumar Choudhary, Mr. Ashutosh Sharma, Ms. Rachna Srivastava, Mr. Sukrit R. Kapoor, Ms. Monika, Mr. C.D. Singh, Mr. D.S. Parmar, Ms. Sakshi Kakkar, Ms. Saumya Kalra, Mr. Udit Arora, Mr. Wasim A. Quadri, Mr. Tufail A. Khan, Mr. B.K. Prasad, Mr. Yunus Malik, Mr. Anish Maheshwari, Ms. Rajeeta Raj, Advocates, Mr. Ajay Bansal, AAG, Mr. Kuldip Singh, Mr. Gaurav Yadava, Mr. Sunil K. Jain, Mr. Akarsh Garg, Mr. Kaushik Choudhary, Mr. Krishnanand Pandey, Mrs. K. Enatoli Sema, Mr. Edward Belho, Mr. Amit Kumar Singh, Mr. K. Luikang Michael, Mr. T.R. Rama Rao, Mr. K. Veera Reddy, Mr. Hitesh Kumar Sharma, Advocates, Mr. S.S. Shamsbery, AAG, Mr. Amit Sharma, Mr. Prateek Yadav, Mr. Ankit Raj, Mr. Irshad Ahmed, Mr. R. Ramesh and Mrs. A. Sumati, Advocates, for the Respondent

## **Judgement**

I.A. No. 339 & 336

1. These applications, in our considered opinion, are practically superfluous, inasmuch the very grievance expressed in these applications was already addressed, considered and dealt with in IA No. 5 of 2009 in I.A. No. 244 in WP (C) No. 1022/1989 in the order dated 8.10.2012. In the said application, the prayer of the applicant was as under:-

"(i) the existing pensions of all past pensioners who retired after 1.1.1996 and the pensioners whose pensions were consolidated as per Karnataka model shall be raised by 3.07 times on par with the other pensioners subject to minimum of 50% of the revised pay scale of pay of their respective post;

(ii) and in the alternative, consolidation of the existing pensions of the above section of pensioners as per the methodology adopted by the Central Government in pursuance of recommendations of the VIth Central Pay Commission in para 4.1 of the O.M.F. No. 38/37/08 P & PW(A) Government of India dated 1.9.2008."

2. While considering the prayer in the said application, the following order came to be issued:-

"IA No. 5 of 2009 in I.A. No. 244 in WP(C) No. 1022/1989

The applicants in this IA are judicial officers who retired after January 01, 1996, but prior to January 2006. They are aggrieved by the recommendation of Justice Padmanabhan Committee, as contained in paragraph 31 of its report. Paragraph 31 of the recommendations of the Committee, insofar as it is relevant, is as under:-

"Pare 31: The recommendations of the First National Judicial Pay Commission with respect to past pensioners are given in paragraph 23.18 which are as under:

1) The revised pension of the retired judicial officers should be 50% of the minimum of the post held at the time of retirement, as revised from time to time.

Xx xx xx"

Mr. P.P. Rao, learned senior advocate appearing for the applicants, pointed out that the Padmanabhan Committee, apparently due to oversight, fixed the revised pension of the concerned judicial officers at 50% of the minimum of the post held at the time of retirement, as revised from time to time. Consequently, as a result of the revision, the concerned judicial officers are getting as pension an amount which is lower than what they earlier received before revision.

The grievance of the applicants appears to be justified and it is significant to note

that both the High Court of Andhra Pradesh and the State Government of Andhra Pradesh, in their respective responses, have supported the case of the applicants.

Mr. A.T.M. Sampath, learned amicus curiae, also submitted that there was evidently some error in the recommendation of the One Man Committee.

We accordingly, accept the prayer of the applicants and allow this IA in terms of prayer clause (i) of the application.

I.A. No. 5 stands disposed of."

3. After noting the above said order already passed by this Court on 8.10.2012 and also a G.O. issued by the State of Andhra Pradesh vide G.O. No. 86 dated 19.7.2013 complying with the directions contained in the order dated 8.10.2012, we issued notice to all the State Governments as well as the High Courts in our order dated 28.4.2016 and called for their response. Only three states have responded by filing reply affidavit, namely, Orissa, Himachal Pradesh and Tamil Nadu. While on behalf of State of Orissa, time of two weeks was sought for to file the Status Report, the State of Tamil Nadu after referring to the manner in which the pension is being dispensed to the retirees prior to 1.1.2006 ultimately submitted that the State will abide by the orders/directions to be issued by this Court. So far as the State of Himachal Pradesh is concerned, a peculiar stand is being taken to the effect that in the State of Himachal Pradesh a different pattern of pension is being adopted with reference to other State Government employees, which is being applied to Judicial Officers as well. Mr. Suryanarayana Singh, learned Additional Advocate General appearing for the State of Himachal Pradesh drew our attention to the said stand taken in the reply filed before us and sought for affirmation of the said position being followed by the State of Himachal Pradesh.

4. No other State Government has responded to our notice dated 28.4.2016 and filed any affidavit or reply. There is also no representation from any of the State Government opposing this application.

5. Having heard Mr. P.P. Rao, learned senior counsel for the applicant and Mr. Suryanarayana Singh, learned Additional Advocate General appearing for the State of Himachal Pradesh, at the very outset, we state that the issue as noted by us is already covered by the order of this Court dated 8.10.2012. Therefore, nothing more is to be ordered by us in this application except simply adopting the said order already issued. The prayer in this application is for a direction to the State Governments except the States of Andhra Pradesh and Telengana to secure time-bound implementation and compliance of the order dated 8.10.2012 passed by this Court in IA No. 5 of 2009 in I.A. No. 244 in WP(C) No. 1022/1989. Since, by our order dated 8.10.2012, the prayer as made in the said I.A. No. 5 of 2009 in I.A. No. 244 in WP(C) No. 1022/1989, as extracted in the earlier part of this order, has already been passed, based on which the States of Andhra Pradesh and Telengana have passed orders and issued G.O., namely, G.O. No. 86 dated 19.7.2013, we direct that all the other State Governments should follow

the suit and pass appropriate notifications implementing the directions contained in our order dated 8.10.2012 in respect of their retirees between 1.1.1996 and 31.12.2005. Whatever arrears payable for the period from 1.1.2006 uptill this date shall be calculated and paid expeditiously and the future calculation of pension for future months should be made on that basis from the month of July, 2016. The arrears shall be paid within six months from the date of production of a copy of this order.

6. These I.As. shall stand allowed with the above directions.

I.A. No. 17

7. This application inter alia is for a direction to the respondent State of Bihar to strictly adhere to the recommendations of the Shetty Commission, insofar as reimbursement of medical bills of the retired judicial officers as recommended in para 19.122 of the Report read with para 23.19. Insofar as medical reimbursement is concerned, the State Government came forward with a resolution dated 15.5.2013, as per which the stand was that the medical expenses of the retired officers of the State Judicial Officers shall be reimbursed at par with the serving officers of the service. Reimbursement would be done from Law Department of the State Government and that the said department will issue the process and directions in that respect. In the reply affidavit filed before this Court, the said resolution has been explained in the following manner in para 6:-

"6. That in this regard, it is respectfully submitted that the Law Department has already issued a detailed guideline with respect to the procedure applicable for reimbursement and it has specifically provided therein that the retired judicial officers settled in the State shall get the reimbursement up to Rs. 2,00,000/- from Principal District Judge of the District from where they were getting their pension and in case of reimbursement of claim above Rs. 2,00,000/- they will get the reimbursement from the Law Department on approval of Finance Department. Same process will apply for payment of Medical advance of retired judicial officers."

8. On a reference to the resolution dated 15.5.2013 and as explained in the reply affidavit in para 6, we find that up to a sum of Rs. 2,00,000/- to be reimbursed, the same would be done by getting it processed through the Principal District Judge of the District from where the retired officer is settled and in the event of the claim being above Rs. 2,00,000/- such claim would be processed by the Law Department with the approval of the Finance Department and thereafter it would be settled in favour of the concerned retired officer. Insofar as the said stand of the State Government is concerned, we do not find any scope to interfere with it. We only state and direct that even while the Law Department is entitled to process the claim for reimbursement over and above Rs. 2,00,000/- with the approval of the Finance Department, the said exercise should be carried out within a period of 45 days from the date the claim is raised by the retired judicial

officer.

9. Mr. Sunil Fernandes, learned counsel, appearing on behalf of the State of Jammu and Kashmir submitted that the said grievance, as expressed in this application/Compliance Chart, will be considered and complied with within a period of two weeks from today. The said stand taken on behalf of the State of Jammu and Kashmir is recorded and the State is directed to extend the medical facilities as per Justice Shetty Commission's recommendation contained in para 19.122 read with paras 23.18/23.19 of Volume III within two weeks from the date of production of a copy of this order.

10. Ms. Rajshri Dubey, learned counsel, undertakes to appear for the State of Maharashtra on behalf of Mr. Nishant Katneshwarkar. Standing Counsel for the State of Maharashtra and accepts notice in I.A. No. 17 and seeks time to file reply to the Compliance Chart as well, within two weeks. Two weeks time for filing the reply is granted.

11. As far as Union Territory of Puducherry and NCT of Delhi are concerned, there were three grievances mentioned in paragraph "a" "b" and "c" of the Compliance Chart. As far as prayers "a" and "b" are concerned, it is submitted by counsel for both sides that the same has been sorted out and, therefore, the said grievances no longer survives. The grievance mentioned in prayer "c" relates to commutation of pension, which has been restricted to 40% to the Union Territory of Puducherry and NCT of Delhi instead of 50% of the pension as is in vogue in all other states. In fact there was an order as early as on 28.1.2014 of this Court directing the Union Territories as well as the Central Government to enhance the commutation level from 40% to 50% but yet the same has not been implemented so far. Therefore, we direct the respective Union Territory of Puducherry and NCT of Delhi as well as the Ministry of Law and Justice to implement the direction for enhancing the commutation of pension from 40% to 50% and pass appropriate orders for that purpose within four weeks from the date of production of a copy of this order.

12. In view of the above, I.A. stands disposed of.

I.A. Nos. 1 & 2 in I.A. No. 17

13. Application for intervention is allowed.

14. This application is at the instance of the Orissa Retired Judges Association which seeks for prayer as against the State of Orissa for a direction to revise the pension of pre-1996 and pre-2006 pensioners/retired judicial officers at 50% of the minimum pay of the post held at the time of their retirement as revised from time to time irrespective of the number of qualifying years of service as recommended in para 23.18 Chapter 23 of Justice Shetty Commission dated 11.11.1999. Before considering the said prayer, at the very outset we wish to clarify that the prescription in 23.18 intend to ensure that it should be read to the effect that the minimum of the revised pension of the retired judicial officers

should be 50% of the pay of the post held at the time of their retirement, as revised from time to time. In other words, if by virtue of the exercise of revising the pension of a retired judicial officer prior to 1.1.2006 in the revised scale of pay, by any chance the pension gets reduced below 50% of the revised scale, the minimum revised pension should not fall below 50% of the corresponding revised scale. In the same breath, it must be stated that if such revision results in more than 50% in the revised scale, such higher pension in the revised scale corresponding to the pre-revised pension which was last drawn pay of the retired judicial officer, should be protected. If once, we understand the implication of para 23.18 to such categories of judicial officers, there is no difficulty in directing the State Government to apply the said prescription in para 23.18 and work out the pension payable to the judicial officers falling under the said paragraph without reference to the number of qualifying years of service for working out the revised pension payable to them. Clarifying the said position with reference to the applicability of para 23.18, the State of Orissa is directed to work out the revised pension payable to those who fall under paragraph 23.18 and pay the same accordingly.

15. The respondent/State of Orissa is directed to carry out the said exercise and implement the same expeditiously, preferably within three months.

I.A. 334

16. Since, it is reported that identical prayer is subject matter of consideration in Civil Writ Petition No. 696 of 2010 titled H.P. Judicial Service Officers Association v. State of Himachal Pradesh and others, before the High Court of Himachal Pradesh, we are of the view that the parties should be relegated to work out their remedy in the said writ petition and await the outcome of the said writ petition.

17. Adjourned.

18. The applicant is permitted to move the High Court for expeditious hearing of the writ petition.

I.A. 338

19. Learned counsel appearing for the High Court of Jharkhand seeks time to file reply.

20. Reply, if any, be filed within four weeks.

I.A. 342

21. Learned counsel for the applicant seeks to withdraw this application reserving his liberty to work out the remedy before the High Court.

22. The I.A. is permitted to be withdrawn.

I.A. 343 and 344.

23. Granting liberty to the applicants to approach the High Court, these applications stand dismissed as withdrawn.

I.A. 345

24. To be taken up along with I.A. 334.