

(1994) 10 KL CK 0051
In the High Court Of Kerala
Case No : O.P. 13295/92 G

Chandrasekhara Menon

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-10-1994

Acts Referred:

Constitution of India, 1950 — Article 214, 216, 217, 219, 221
High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 23D, 23D(1)

Citation : (1994) 10 KL CK 0051

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : R.K. Venu Nayar, for the Appellant; George C.P. Tharakan Central Government Standing Council for 1st Respondent, Kurian Joseph, A.A.G. for 2nd Respondent, P.K. Suresh, for 3rd Respondent and Thottathil B. Radhakrishnan, for 4th Respondent, for the Respondent

Judgement

K.T. Thomas, J.—A retired High Court Judge—a septuagenarian now-complains that medical facilities provided by law have not been disbursed to him either by the Central Government or by the State Government. He and his wife are in great need of such medical facilities as their health is waning with advancement of old age. He sent a representation to the Chief Minister of Kerala (Ext. P-4) but no relief was obtained by him. Hence he has filed this original petition for appropriate reliefs.

2. Two other retired High Court judges got themselves impleaded in this original petition and supported the averments of the Petitioner.

3. Section 23D of the High Court Judges (Conditions of Service) Act, 1954 (for short "Act of 1954" contains the following provisions:

23D (1) Every retired Judge shall, with effect from the date on which the High Court Judges (Conditions of Service) Amendment Act, 1976 receives the assent of the President, be entitled, for himself and his family to the same facilities as

respects medical treatment and on the same conditions as a retired officer of the Central Civil Services, Class I and his family, are entitled under any rules and orders of the Central Government for the time being in force. (2) Notwithstanding anything in Sub-section (1) but subject to such conditions and restrictions as the Central Government may impose a retired Judge of the High Court for a State may avail, for himself and his family and facilities for medical treatment which the Government of that State may extend to him.

4. The Central Government have evolved a scheme known as Central Government Health Scheme (C.G.H. Scheme) as per which a retired Central Government Class I Officer is provided with certain medical facilities on payment of a small amount as contribution. But the benefit of the scheme can be availed of only by those pensioners who are residing in any of the 15 cities listed therein. No place in Kerala is included among those 15 cities. On that premise the Central Government do not extend the medical facilities envisaged in the scheme to any one of the retired High Court Judges (Domiciles in Kerala).

5. However, Government of Kerala had issued an order (G.O. Ms. No. 323/81, dated 19th September 1981) extending the benefits granted to members of All India Services to retired Judges of the High Court and Supreme Court residing in Kerala. But the benefits so extended are too meagre for the Judges since there is no provision for reimbursement of medical bills incurred by a pensioner. But Government of Kerala, by a subsequent order, have granted such reimbursement facilities to the retired Supreme Court Judges domiciled in Kerala. Even then, such benefits were kept at bay as for the retired Judges of the High Court.

6. Government of Kerala tried to defend the action of limiting the reimbursement facilities to retired Supreme Court Judges (domiciled in Kerala) on the ground that the financial burden is not very heavy since there was only one person falling within the said category. The further stand of the State Government in the counter-affidavit is that extension of the benefits envisaged in C.G.H. Scheme to retired High Court Judges is for the Central Government to do and that the State Government have in fact requested the Central Government to do so by letter dated 13th January 1983 and that it is only on account of financial constraints that the State Government is disabled from extending the facilities to retired High Court Judges.

7. In the counter-affidavit filed on behalf of the Central Government, it is stated, inter alia, that no discrimination has been made between a retired High Court Judge and a retired Supreme Court Judge in the matter of pensionary benefits, and it was only due to financial constraints that C.G.H. Scheme has not been extended to Kerala.

8. Central Government's stand in this matter appears to be that if a retired High Court Judge wants to have medical facilities on a par with a retired Class I officer the former must shift his residence to one of the 15 cities listed in the C.G.H. Scheme. Such a stand is a clear infraction of the parliamentary intent enshrined

in Section 23D of the Act of 1954. It is easy to realise that the provision confers a right on " every" retired High Court Judge and the right so conferred is absolute. The words employed in the provision i.e. "shall be entitled" are clear enough to convey the intention of the Parliament. The other words in the provision reading as "the same conditions as a retired Class I Officer of the Central Civil Services" have been employed only to denote the grade or nature of the facilities conferred on the beneficiary. Those words cannot be understood divorced from the core of the provision. Section 23D when read as a whole conveys the clear idea that the legislative intent was to give alifmedicai facilities to every one of the retired judges. At any rate, it could never have been in the contemplation of parliament that two categories of retired High Court Judges should be created, one consisting of those residing in the cities specified in the scheme and the other consisting of those who are residing outside such cities. If the contention advanced on behalf of the Central Government is accepted, no Judge of the Kerala High Court can ever expect to have the facilities enjoyed by their counterparts living in those cities as long as the scheme remains like this. No scheme made by the Government can be used to defeat the legislative mandate or to whittle down parliamentary intent expressed in the statute.

9. Section 23D was inserted in the Act of 1954 through the High Court Judges (Conditions of Service) Amendment Act 35 of 1976. In the Statement of Objects and Reasons for introducing Act 35 of 1976, it is stated thus: "It is further considered necessary to give post-retirement medical facilities to the same extent as are admissible to retired Central Government servants of Class I and to enable the retired judges to avail of such medical facilities as the State Government may decide to extend them". The Bill as such was adopted and Parliament thereby declared its intention that "every" retired High Court Judge should get all the benefits which "a" retired Class I Officer of the Central Government gets. Use of the indefinite article "a" in the context is to cover the meaning "anyone of the retired officers".

10. Even in the constitutional scheme every judge of any High Court, has the same status and position which any judge of any other High Court has. In the pre-constitution period, there might have been different classes of High Courts in India, but the Constitution made it uniform in regard to the status, powers and remuneration irrespective of the location of the High Court.

11. Article 214 provides that there shall be a High Court for each State and Article 216 provides that every High Court shall consist of a Chief Justice and other Judges as the President may from time to time deem it necessary to appoint. Article 217 has the title "payment and conditions of the office of a Judge of a High Court". It says that "every Judge of a High Cofcrt shall be appointed by the President by warrant under the seal and signature" for which identical consultative machinery is provided for every judge. Again, under Article 219 every judge has to take oath in identical words before he enters upon his office in whichever High Court he is appointed. The restriction imposed against post-

retirement practice is applicable to every judge without any domicile distinction. Article 221 enjoins that there shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law. Sub-article (2) confers right on "every Judge" to such allowance and also leave of absence and pension as may from time to time be determined by or under law made by Parliament.

12. It is, therefore, clear that even Parliament has no legislative power to discriminate one High Court Judge from another High Court Judge in matters concerning salary and pension. The corollary is that every retired Judge of a High Court, wherever he resides, has the same post-retirement benefits. Government cannot abridge the right through any executive fiat.

13. A similar question came up before a Division Bench of the Orissa High Court recently. Justice Sachidananda Acharya and Others Vs. Union of India (UOI) and Others, . The division bench held that u/s 23D of the Act/54 Government are bound to provide medical facilities to every retired judge and that shortage of finance is no ground to make a discrimination between them. Their Lordships observed thus: "Union Government is not entitled to abridge or take away the rights of a retired Judge of a High Court flowing from the provisions of Section 23D by deciding that such rights would be conferred to only those who are residing in the 15 cities where C.G.H.S. is in operation and not to others". The Division Bench issued a mandamus to the Union of India to make suitable provisions for implementing the benefits conferred upon the retired judges of the High Courts u/s 23D and until such action is taken to grant facilities of availing the C.G.H. Scheme by getting the names of the retired judges registered under the scheme. The upshot is that Government cannot make a discrimination between one class of retired! judges and another on the basis of domicile. All the retired High Court judges are entitled to the pensionary benefits provided to any one of the retired Class I Officers, irrespective of where he resides.

14. Now the question is, what is the relief to be granted to the Petitioner in this case. I do not think that a mandamus, will be an efficacious relief in the circumstances as that too Would involve further delay in implementation of the relief. It is suggested that a declaration that every retired High Court judge is entitled to the benefits covered by the C.G.H. Scheme would be a more, useful relief despite the obligation of the pensioner to subscribe to the contribution amount.

For the aforesaid reasons it is hereby declared that Petitioner as well as all other retired High Court judges and members of their families residing within the State of Kerala are entitled to all the benefits envisaged under C.G.H. Scheme as for a retired Class I Officer of the Central Government. However, it is open to the Central Government or any authority prescribed under the C.G.H. Scheme to collect or realise the prescribed contribution amount from the retired! High Court Judge concerned. This Original Petition is disposed of accordingly.