
(1998) 01 DEL CK 0061
In the Delhi High Court
Case No : Civil Writ No. 3783 of 1991

D.R. Khanna

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

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

Citation : (1998) 71 DLT 552 : (1998) 44 DRJ 452

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Sanjeev Khanna, for the Appellant; Mr. Saravjit Sharma, for the Respondent

Judgement

Devinder Gupta, J.—The petitioner was a member of Delhi Higher Judicial Service. By "Virtue of warrant dated 15.10.1997 issued by the President of India the petitioner was appointed as an Additional Judge of this Court. Along with the petitioner, three others including Shri J.D. Jain were appointed as additional Judges of this Court by similar orders of the President of India. The swearing in of the petitioner Along with others was postponed to 19.10,1979. The reason for postponement was that Shri J.D. Jain who was also from Higher judicial Service and was senior to the petitioner in that service, had to deliver a judgment, which was delivered on 18.10.1979. Thus the petitioner though appointed as an Additional Judge on 15.10.1979 was able to assume charge of his new office only on 19.10.1979, there by losing four days" of service as a Judge of High Court. On attaining the age of 62 years, the petitioner retired as Judge of this Court on 16.10.1985. From the date of assuming the charge to the date of retirement, the petitioner served for a total period of five years, 11 months and 28 days as a High Court Judge, namely, two days short of six completed years of service as Judge of the High Court.

2. The petitioner's grievance is against the order (Annexure-C) dated 21.3.1991 conveying to the Registrar of this Court rejection of the petitioner's

representation either for condensation of two days service or for addition of the said period to enable him to earn pension for six completed years of service as High Court Judge.

3. The petitioner's challenge to the aforementioned order is on the ground that the reliance placed on Section 16 of the High Court Judges (Conditions of Service) Act, 1954 (hereinafter referred to as "the Act") in refusing to condone the shortfall of two days is misconceived and without application of mind. It is alleged that the petitioner had not requested for addition of two days but requested for condensation of two days shortfall, which would have the effect of completing six years of service as a Judge of High Court, which otherwise he would have completed had he been administered oath of his office on 15.10.1979, but for the postponement, which was not due to any reason on his part but for reasons beyond his control. In the alternative, it is alleged that assuming that Section 16 of the Act is applicable, refusal on the part of the respondent to add the said period is an arbitrary exercise of power. In a large number of cases addition of service has been allowed and additional period has been considered for the purpose of pension. Denial of such benefit to the petitioner is thus discriminatory.

4. The respondent contested the petition on reply filed on the affidavit of Shri P.N. Singh, Under Secretary, Ministry of Law and Justice (Department of mistake). It is alleged that the application of the petitioner for addition of two days service was examined with reference to the provisions of Section 16 of the Act. The proviso to Section 16 restricts commutating the period for service for additional pension. Accordingly, the petitioner's application was rejected. As there has been a specific law dealing with the request, which was made by the petitioner, there is no ground for seeking addition of period to the service with reference to the circumstances that existed as on the date of appointment. As on the date of petitioner's appointment as well as retirement, the petitioner was entitled to five completed years of service as High Court Judge. The petitioner's case be in within the ambit of the said provision 9 as on the date of retirement, the case for pension with additional pension was finalised accordingly. The addition of period permissible u/s 16 of the Act read with the proviso thereto does not qualify for computing pension under Part III of the First Schedule, to the Act. As regards the precedents of various Judges quoted by the petitioner, the respondents clarified that cases of Judges appointed from the Bar for purposes of pension are governed by Part-I of First Schedule and not by Part-III under which the petitioner's case is governed. The proviso to Section 16 of the Act of 1954 while allow in addition of any period not exceeding three months to the service of such Judges at par with petitioner's class of Judges i.e. Part III Judges, becomes restricted for computing any additional pension admissible under Part-I against the added period to the service. In the instant case even if addition of period, had been allowed within the scope of Section 16 of the Act of 1954, the same would not have qualified for computing any additional pension in the case of the petitioner by virtue of the proviso to the said section. Even if

there had been no proviso to said Section 16, in that case also the petitioner as on 17.10.1985 would have been entitled to a maximum of additional pension equal to five complete years of service as High Court Judge only and the same was allowed to him. In the past retired Judges of this Court have not been allowed any additional pension against the added. period of service. The respondents have denied that there is" any discrimination or that the impugned decision is arbitrary.

5. We have heard learned Counsel for the parties at length.

There are three sources from which High Court Judges are appointed, namely, (a) from the Bar; (b) Members belonging to the Former Indian Civil Service; and (c) Officers from the State Judicial Service. Chapter-III of the Act deals with pension payable to Judges. Every Judge on his retirement is paid pension in accordance with the scale and provisions as contained in First Schedule of the Act. Part-I governs those Judges who are appointed from the Bar. Part-II deals with those Judges who belong to Former Indian Civil Service and Part-III deals with those who held any pensionable post under the Union or a State, which also includes the officer from State Judicial Service.

6. Pension is defined in Clause (gg) of Subsection (1) of Section 2 of the Act to mean pension of any kind whatsoever payable to or in respect of a Judge and includes any gratuity or other sum or sums so payable by way of death or retirement benefits. Clause (b) of Subsection (1) to section 15 says that every Judge, who is not a member of the Indian Civil Service but has held any other pensionable post under paid a pension in accordance with the scale and provisions in Part III of the First Schedule. Para 2 of Part- III of the First Schedule, as amended by the High Court Judges (Conditions of Service) Amendment Act, 1988 (Central Act No. 20 of 88) reads:

"2. The pension payable to such a Judge shall be:

(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and

(b) a special additional pension of Rs. 1,600/- per annum in respect of each completed year of service for pension but in no case such additional pension together with the additional or special pension, if any, to which he is entitled under the ordinary rules of his service, shall exceed Rs. 8,000/- per annum.

Provided that the pension under Clause (a) and the additional pension under Clause (b) together shall in no case exceed Rs. 54,000/- per annum in the case of a Chief justice and Rs. 48,000/- per annum in the case of any other Judge."

7. Subclause (b)"of para 2 of Part-III as quoted aforementioned was subject matter of consideration before the Supreme Court in M.L. Jain Vs. Union of India, . Shri M.L. Jain was Member of Rajasthan judicial Service and was elevated as Judge of Rajasthan High Court on 1.7.1975. He was transferred to Delhi High

Court and retired as such on 21.7.1994. Dispute relating to his pension was subject matter of writ petition, which was decided on 9.4.1995 and that decision is reported as *M.L. Jain and Another Vs. Union of India and Others*, . Due to the changes, which were brought about by Central Act 38 of 1986 and Central Act 20 of 1988, Shri Jain applied for refixation of his pension, which was allowed but again approached the" Supreme Court for challenging the ceiling of additional pension appearing in clause (b) of para 2 of Part-III of First Schedule. The petition was allowed. Clause (b) of para 2 was declared as ultra vires. Consequently, it was directed that all cases to which situation of Mr. Jain would apply should be revised by Union of India without requiring representation or application from retiring Judges. The reasonings on which clause (b) of para 2 of Part-III was declared ultra vires are stated in para 4 of the report as under:

"A member of the Bar with 14years of completed service out of which six years are served as A Chief Justice or as a Judge of the Supreme Court gets the maximum, pension of Rs. 54,000/- and in the event of his retirement without becoming Chief Justice or a Judge of the Supreme Court, his pension entitlement is Rs. 48,000/- per annum. Similar is the provision relating to the members of the Indian Civil Service who were earlier elevated as Judges. It is the contention of the petitioner that once a ceiling limit was fixed as 60r" in the proviso of the Third Part, there was no further justification for the paragraph 2(b) ceiling. We find full force in the submission. The reasons which weighed with this Court on the earlier occasion for enhancing the petitioner"s pension fully apply to the present aspect. The ceiling of Rs. 8,000/- Therefore, is not necessary to be imposed and if that it applied, a situation the application of Art. 4 of the Constitution does arise. In fact, the presence of the proviso clearly brings out the intention that no attempt is sought to be made between Judges recruited from the different sources for the matter of the ceiling on pension. We, Therefore, modify the order of this Court fixing petitioner"s pension at Rs. 46,100/- and require his pension to be fixed at Rs. 48,000/ - per annum by holding that the ceiling in paragraph 2(b) of Part-III of the First Schedule is unsustainable under Art. 14, of the Constitution and would not be operative."

8. The respondent"s version is that the petitioner"s case for addition of two days to his service u/s 16 of the Act was considered but the said benefit was not given since proviso to Section 16 of the Act provides that the period added to the service of a Judge shall be disregarded in calculating any additional pension under Part-I, Part-II or Part-III of the First Schedule. It was contended that the said proviso to Section 16 is equally applicable to all High Court Judges irrespective of sources of their appointment.

Section 16 of the Act reads:

"Power of the 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 disregarded in calculating any additional pension under Part-I or Part-II or Part-III of the First Schedule."

9. The respondents have not disputed that in so far as the instances cited by the petitioner in his rejoinder except that of justice F.S. Gill, all other retired Judges fell in the category of Part-I of First Schedule and were allowed addition of period to their service u/s 16 of the Act but were not been allowed any additional pension on the added period. It is also the case of the respondents that the provisions of the Act providing for pension and additional pension have now been considered and have been held valid by Supreme Court in M.L. Jain's case (supra) except for the ceiling on additional pension. In M.L. Jain's case (supra), it was held that once a ceiling limit was fixed in the proviso there was no justification for the ceiling in para 2 of the third part.

10. We have not been able to appreciate the respondents' stand on the purpose of the proviso to Section 16. There is an express power available in the Act for addition of period not exceeding three months. Upper ceiling limit of pension, has been made applicable w.e.f. 1.11.1986 by the Central Act 20 of 88. The presence of proviso in para 2 of Parts I, II and III clearly brings out the intention that no attempt is sought to be made between Judges recruited from different services in the matter of ceiling on pension. As such it is not understandable that how the proviso to Section 16 would remain applicable for the added period. After amendment by Central Act 20 of 1988, there can be no reason for discarding the added period in calculating any additional pension. The same reasons, which prevailed in declaring Clause (b) of para 2 in Part-III as ultra vires in M.L. Jain's case (supra) would hold good in declaring the proviso to Section 16 of the Act as ultra vires. The purpose and purport of amendments carried out by the Central Act 20 of 88 has been that in case of a member of the Bar with 14 years of completed service, out of which six years are as Chief Justice or as a Judge of the Supreme Court maximum limit of pension is Rs. 54,000/- but in the event of such a Judge retiring without becoming as Judge of Supreme Court or Chief Justice, the entitlement to pension is Rs. 48,000/- p.a. For the members belonging to the former Indian Civil Services as also to the officers of State Judicial Service or other pensionable post under the Union or a State, who are appointed as Judges, similar upper limit is provided in the proviso to para 2 respectively in Part-II and Part-III of the First Schedule of the Act. Power for addition to the service for pension is exercisable only to the extent of three months. Obviously such addition of the period would be to the service as a Judge of High Court and not for any other service. Though proviso to Section 16 makes a reference to the addition of pension under Part-I but no such pension is payable to a Judge governed by Part-I. In case there can be addition of any period not exceeding three months in the case of Judges appointed from the Bar and such period is to be added to the service for pension of a Judge, there is no reason why any period added not exceeding three months to the service for those to whom Part-II or Part-III applies that in their case also such addition to the service as Judge of the High Courts be not computed for purpose of pension

of a Judge. Addition of period not exceeding three months to the service of pension of a Judge would obviously have same and similar result in all cases and in no case pension can exceed the upper limit of Rs. 54,000/- p.a. in the case of the Chief Justice or Rs. 48,000.00 p.a. in the case of any other Judge. Thus the stand taken by the respondents is not at all justifiable and for that reason alone the impugned order cannot be sustained.

11. The respondents have not disputed that the petitioner's case was a peculiar one in which warrant was issued on 15.10.1979 but the petitioner could not be sworn in for reasons beyond his control. Had the petitioner been administered 15.10.1979 or within the next two days there would have been no problem petitioner would have been able to complete six years of service as a Judge on 16.10.1985, when he retired on attaining the age of 62 years. Fixing a date for oath was not within his competence and power. It was because of the aforementioned erroneous interpretation to proviso to Section 16, which has now been, found, contrary to law that though the petitioner's case was taken to be a case of special nature referred to in Section 16 but relief was denied to him. The said order on the ratio of decision in M.L. Jain's case (supra) being bad in law is liable to be struck down.

12. Consequently, while allowing writ petition and quashing the impugned order, we direct the respondents to fix the pension of the petitioner from 17.10.1995, after taking into account six years of completed service as a Judge of the High Court. Instead and in place of Rs. 3,500/- p.a. being special petitioner is held entitled to Rs. 4,200/- towards special pension from 17.10.1985 and Rs. 9,600/- instead and in place of Rs. 8,000/- p.a. on and from 1.11.1996. Arrears of pension will be duly worked out and paid to the petitioner within a period of two months from the date of receipt of writ order from this Court.

13. Petition allowed.