
(2003) 11 DEL CK 0080
In the Delhi High Court
Case No : CWP 2783 of 1993

D.S. Tewatia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Citation : (2004) 72 DRJ 283 : (2004) 3 SLJ 449

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : R.M. Bagai and Madhu Tewatia, for the Appellant; Maninder Singh and Nishakant Pandey, for the Respondent

Judgement

Mukundakam Sharma, J.—This writ petition is placed before me by the orders of Hon"ble the Chief Justice in view of the difference of opinion between the two Hon"ble Judges of this court in respect of the issue which is involved in the present petition. The issue that arises for consideration is as to whether a Chief Justice, who has not even put in one year of completed service as Chief Justice is entitled to be paid pension of a Chief Justice at Rs. 54,000/- per annum.

2. The petitioner herein was appointed on 6th February, 1970 as an Additional Judge of the High Court of Punjab & Haryana at Chandigarh. On 8th April, 1972 the petitioner was made a permanent Judge of the same High Court. However, the petitioner was subsequently transferred as a Judge of Karnataka High Court and on such transfer he assumed charge and duties as a Judge of the Karnataka High Court, on 27th June, 1976. Subsequently, however, the petitioner was again transferred back and he assumed the duties as of a Judge of the Punjab & Haryana High Court on 28th July, 1977. The petitioner was thereafter appointed as Chief Justice of the Punjab & Haryana High Court at Chandigarh and he assumed office of the said post on 15th October, 1987. Therefore, the petitioner worked as a High Court Judge w.e.f. 6th February, 1970 to 14th October, 1987 and thereafter the petitioner became a Chief Justice and assumed office thereof on 15th October, 1987. Immediately thereafter, the petitioner was again

transferred as the Chief Justice of the Calcutta High Court and he assumed charge of the said office on 2nd November, 1987 and continued in the said office till 2nd May, 1988 when the petitioner relinquished his office after securing premature retirement. Thus, on the date of his premature retirement, the petitioner had to his credit a total of 18 years 2 months and 6 days service inclusive of 6 months and 17 days service as a Chief Justice.

3. A pension of Rs. 48,000/- per annum was sanctioned by the respondent to the petitioner on 2nd August, 1988. The petitioner, however, was aggrieved by the aforesaid decision and filed the present writ petition contending, inter alia, that the decision of the respondent to pay to the petitioner a pension of Rs. 48,000/- per annum is arbitrary and is not in consonance with the provisions of Part I of the First Schedule of the High Court Judges (Conditions of Service) Act, 1954, hereinafter referred to as "the Act". According to the petitioner he is entitled to receive pension at Rs. 54,000/- per annum, which is the pension payable to a retired Chief Justice as prescribed in Para 2 of the First Schedule of the Act.

4. The stand of the respondent on the other hand, is that when the said para 2 is read with Para 6 of the First Schedule, it would be clear and apparent that the service rendered by a Chief Justice for a period less than one year completed service, can be treated only as a service rendered as a Judge and, Therefore, the concerned Judge would not be entitled to receive the pension payable to a Chief Justice.

5. In the light of the aforesaid stand taken by the parties hereto the writ petition was heard by the Division Bench of this court. Hon'ble Mr. Justice Devinder Gupta by His Lordship's judgment and order dated 12th September, 1997 allowed the writ petition and directed for payment of pension at Rs. 54,000/- per annum to the petitioner treating the petitioner as the Chief Justice and giving him the benefit of the proviso to para 2. It was also observed in the said judgment that arrears of balance amount of pension would be duly worked out and paid to the petitioner within three months from the date of the said order along with interest at the rate of 12% p.a. from the date when the pension at the enhanced rate had become due till the date of payment. On the other hand, Hon'ble Mr. Justice K. Ramamoorthy held that the view taken by the respondent is in accordance with the provisions of Paras 2 and 6 of the Schedule 1 of the Act and accordingly the petitioner would be entitled to pension only at Rs. 48,000/- per annum and not at Rs. 54,000/- per annum as claimed by the petitioner.

6. In view of the aforesaid difference of opinion between the Hon'ble Judges of the Division Bench on the main issue that was canvassed before the Division Bench by order dated 12.9.97 the Division Bench ordered that the file be put up before the Hon'ble Chief Justice for making reference to the 3rd Judge on the interpretation of Paras 2, 6 & 8 of the First Schedule of the Act. Pursuant to the said order the matter was listed before different Benches and ultimately by order dated 10th September, 2003, passed on the administrative side, this matter has been placed before me for giving my decision on the issue raised in the present

petition.

7. I have heard the learned counsel appearing for the parties and have very carefully perused the decisions of both the Hon"ble Judges of the Division Bench and the records of the case. ,

8. Hon"ble Mr. Justice Devinder Gupta in his judgment had referred to and dealt with Paragraphs 2 and 6 of Part 1 of the First Schedule and on interpreting the said provisions, it was held by His Lordship that the petitioner who retired as a Chief Justice and had to his credit 6 months and 17 days service as Chief Justice , which is less than a completed year of service rendered as Chief Justice, shall have the benefit of counting the said service towards the service rendered by him as a Judge and, Therefore, the total pension as per the scale mentioned in Para 2 worked out to Rs. 61,740/- treating each completed year of service only "as. any other Judge. It was also held that as the petitioner had retired as a Chief Justice and on application of the maximum limit prescribed in the proviso to Para 2 of Part I of the First Schedule, the amount of pension payable to the petitioner would be at Rs. 54,000/- per annum and not Rs. 48,000/-. In the light of the aforesaid conclusions arrived at , His Lordship held that the respondent"s action of putting an embargo and limiting the pension only at Rs. 48,000/- per annum by treating the petitioner as "any other Judge" and not as a Chief Justice, is arbitrary and contrary to the provisions of paras 2 & 6 of Para I of the First Schedule of the Act. Consequently, His Lordship allowed the writ petition with a direction as mentioned hereinabove.

9. Hon"ble Mr. Justice K. Ramamoorthy also considered the aforesaid paragraphs 2,6 & 8 and on interpretation thereof, held that Para 6 of the First Schedule places an embargo to the extent that in order to receive a pension at Rs. 54,000/- per annum, which is payable to a Chief Justice , the concerned Chief Justice must have a completed service of one year or more rendered as a Chief Justice. It was held by His Lordship that the provision of Para 2 has to be read in that context and the proviso cannot be taken out in this context. Accordingly, His Lordship held that the petitioner would be entitled to pension of only Rs. 48,000/- per annum and not at Rs. 54,000/- per annum as claimed by the petitioner in this petition.

10. In the facts and circumstances of the present case, it would be necessary to extract the provisions of Paragraphs 2, 6 & 8 of Part I of the First Schedule of the Act in order to appreciate the contentions raised in the present petition and to answer the reference made. The said paragraphs are extracted below:-

(2) Subject to the other provisions of this Part, the pension payable to a Judge to whom this Part applies and who has completed not less than seven years of service for pension shall be :-

(a) For service as Chief Justice in any High Court Rs. 4500/- per annum for each complete year of service.

(b) For service as any other Judge in any High Court, Rs. 3430/- per annum for each completed year of service.

Provided that the pension under this paragraph 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.

6. A Judge, who has rendered service for pension both as Chief Justice and other Judge in any High Court may claim that any period of service of less than a completed year rendered by him as Chief Justice , or any portion of such period, shall be treated for the purposes of paragraph 2 as service rendered by him as other Judge. 8. Notwithstanding anything contained in the foregoing provisions of this Part, the pension payable to a Judge, who has completed [fourteen years] of service for pension, including not less than six years of service as Chief Justice of one or more of the High Courts, shall be Rs. [54,000] per annum.

11. During the course of his arguments counsel appearing for the respondent has strongly relied upon the judgment rendered by Hon''ble Mr. Justice K. Ramamoorthy and has advanced his arguments relying on the observations made in the said judgment.

12. Counsel appearing for the petitioner, while supporting the judgment rendered by Hon''ble Mr. Justice Devinder Gupta, has also relied upon a judgment of the Supreme Court in Union of India (UOI) Vs. Syad Sarwar Ali and Others, . In the said decision also the same proviso to Rule 2 of the First Schedule of the Act, came up for interpretation before the Supreme Court. While dealing with the aforesaid proviso to Rule 2 of the First Schedule of the Act the Supreme Court has observed that right to pension arises when there is termination of service or when a person retires or resigns or on his death and that it is on the happening of one of those contingencies that the question would arise with regard to the amount of pension payable. Having observed thus, the Supreme Court referred to Rule 2 of the First Schedule and interpreted the said provision laying down that the provision for payment of pension for the Chief Justice is different than that of a puisne Judge. It was accordingly observed as under:-

"The rate and the ceiling of pension of the Chief Justice is higher than that of a Judge, but the proviso states that the pension shall not 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. It clearly implies that on the date of retirement, when the question of what is the amount of pension which is to be payable arises, it is seen whether the person concerned was a Chief Justice or a puisne Judge."

13. Thereafter, in para 10 of the said judgment, the Supreme Court has observed as follows:-

"The role played by the proviso is only to restrict the maximum amount of pension which is payable is Rs. 48,000/- per annum but in the case of a Chief Justice the maximum amount is Rs. 54,000/- per annum. While computing the

pension of a person who had retired as a Chief Justice it is possible that he may not have completed even one year as a Chief Justice with the result that his pension may now have to be calculated at the rate of Rs. 3430/- pr annum for each completed year of service but by reason of the fact that on the date of his retirement he was a Chief Justice, the ceiling for pension is placed at the higher figure of Rs. 54,000/- per annum instead of Rs. 48,000/- per annum. It is not possible to read the word "Chief Justice" occurring in the provision to Rule 2 as a person who during his judicial career, had been a Chief Justice for more or less than a period of one year."

14. The petitioner herein has rendered service as a Judge of a High Court for a period of 17 years 8 months and 8 days and he has to his credit 6 months and 17 days service as a Chief Justice. Therefore, the total pension as per the scale mentioned in Para 2 of Part I of First Schedule would work out to Rs. 61,740/- treating each completed year of service only as any other Judge. But the petitioner also discharged duties and functioned as a Chief Justice and, Therefore, the proviso of Para 2 of Part I of the First Schedule would also become applicable in the case of the petitioner. Therefore, as the petitioner retired as a Chief Justice and in terms of the proviso to Para 2 Part I of the First Schedule, the amount of pension payable to the petitioner would be Rs. 54,000/- per annum and not Rs. 48,000/- per annum in terms of the maximum limit prescribed in the proviso to Para 2 of Part I of the First Schedule of the Act. The said conclusion is irresistible even in the light of the decision of the Supreme Court in the case of Union of India (supra).

15. The observations of the Supreme court have been extracted above only to show and indicate that the issue that is raised in this writ petition is settled and no longer rest integra. In my considered opinion, the facts of the present case are squarely covered by the ratio of the aforesaid decision of the Supreme Court. In the light of the aforesaid decision, it is held that although the petitioner herein did not have one year completed service as a Chief Justice yet in view of application of the provision to para 2 of the Schedule, the petitioner shall be entitled to receive pension at Rs. 54,000/-per annum. It would also be appropriate to mention at this stage that the Supreme Court in the decision of Union of India (supra) noticed and interpreted not only the provisions of Para 2 only but also noticed and considered the effect of Paragraphs 6 on para 2, which is clear and apparent on a bare perusal of paragraph 10 of the said judgment. It is also a common case of the parties that para 8 of Part-I of the Schedule would not have any direct bearing or relevance on the issue arising for consideration. Therefore, when all the aforesaid provisions, namely, paragraphs 2, 6 & 8 are read in proper perspective, the one and the only conclusion that could be deduced is that the petitioner although did not have to his credit a completed year of service as the Chief Justice but by virtue of the fact that he retired as a Chief Justice, the ceiling for pension could be placed at the higher figure of Rs. 54,000/- per annum on the basis of computation of pension at the rate of Rs. 3430/- per annum for each completed year of service working out to a total of

Rs. 61,740/-. Reference made to me is accordingly answered. Thus, the action of the respondent of putting an embargo and limiting the pension at Rs. 48,000/- per annum only is held to be arbitrary and contrary to the provisions of Rule 2 Part I of the First Schedule of the Act.

16. Accordingly, I agree with the reasoning and views expressed by Hon"ble Mr. Justice Devinder Gupta. Consequently, I also allow the writ petition with a direction to the respondent to pay pension to the petitioner at the rate of Rs. 54,000/- per annum. Arrears of the balance amount of pension shall be duly worked out and paid to the petitioner within a period of three months from the date of receipt of copy of the order from this court. The aforesaid amount towards arrears of balance pension shall be paid with interest at the rate of 12% p.a. from the date when the pension at enhanced rate had become due till 12th September, 1997 i.e. the date when the judgment was delivered "by the Division Bench, as subsequent to the said date the amount could not be paid to the petitioner due to difference of opinion expressed by the Hon"ble Judges of this court. It is also made clear that in case the amount in terms of this order is not paid by the respondents within three months, as stated hereinabove, in that event the petitioner shall also be entitled to interest at the rate of 12% p.a from 13th September, 1997 till the date of payment. The parties shall, however, bear their own costs.

17. Since the decision has been rendered on the reference made by the Division Bench, the matter be now, placed before an appropriate Division Bench for consequential orders, on 24th November, 2003, after obtaining orders of the Hon"ble Chief Justice.