(2002) 09 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 84 of 2000

Justice P.N. Nag (Retd.) — APPELLANT

Vs

State of H.P. and Others — RESPONDENT

Date of Decision : 07-09-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 10, 6
Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 16, 16(2), 2
Himachal Pradesh Administrative Tribunal (Salaries, Allowances and Conditions of Service of Chairman and Members) Rules, 1986 — Rule 8
Himachal Pradesh Consumer Protection Rules, 1988 — Rule 13

Citation : (2003) 1 ShimLC 82

Hon'ble Judges : W.A. Shishak, C.J;Kuldip Chand Sood, J

Bench : Division Bench

Advocate : Anuj Nag, for the Appellant; S.S. Mittal and B.K. Sood, Addl. Central Government S.C., for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Chand Sood, J.—Petitioner Justice P.N. Nag (Retd.) was appointed as permanent Judge of the High Court of Delhi on October 12, 1988. He retired on March 4, 1995 from Allahabad High Court. The Petitioner at the time of his retirement had a tenure of about six years and five months as Judge of the High Court. After his retirement, the Petitioner was appointed as President of the Himachal Pradesh Consumer Disputes Redressal Commission u/s 16 of the Consumer Protection Act, 1986, for short "Consumer Act", by a notification dated July 9, 1996. The Petitioner retired from his office as President of the State Commission on March 4, 2000 after rendering more than three years of service as President of the State Commission. The grievance of the Petitioner is:

2. The pension rules, applicable to the employees of the Government, are not applicable to the Judges being a distinct category itself. The Judges are governed in the terms and conditions of their service, including pension, by the High Court

Judges (Conditions of Service) Act, 1954 and their pension is regulated under Chapter-Ill of the Act. Under the relevant provision of the Act, a High Court Judge, if he has not completed seven years of service, is only entitled to minimum of pension. The Petitioner was appointed as President of the State Commission, being retired Judge of the High Court, is entitled to pension and other terminal benefits in respect of the service y rendered by him as President of the Commission.

3. It is the case of the Petitioner that Sub-sections (2) of Section 16 of the Consumer Act itself envisages grant of pension by the State Government to the President of State Commission who is appointed on whole time basis. The Government, therefore, is under a legal obligation to consider the grant of pension to the President and other whole time members of the State Commission.

4. It is the further case of the Petitioner that u/s 6 of the Administrative Tribunals Act, a person is not qualified for appointment as Chairman of an Administrative Tribunal unless he is, or has been a Judge of a High Court. Similar qualifications are required for appointment as President of the State Commission u/s 16 of the Consumer Act. Whereas, Chairman, Vice Chairman and Members of the Administrative Tribunal are entitled to pension, but such benefit is not given to the President and Members of the State Commission. The State Government, in the circumstances, may be directed to frame requisite rules to provide for the pension to the President of the State Commission under the Consumer Act.

5. The Petitioner prays for an appropriate writ, order or direction to the Respondents to:

(i) Consider the question of grant of pension and other terminal benefits to the Petitioner, if necessary by framing appropriate rules or otherwise;

(ii) award cost of the writ petition in favour of the Petitioner and against the Respondents; and

(iii) any other writ order or direction as this Hon''ble Court may deem just and proper in the facts and circumstances of the case.

6. The Respondent No. 1 State of Himachal Pradesh in its return opposes the writ petition. According to the replying Respondent, the jurisdiction of this Court under Articles 226 and 227 of the Constitution in this particular case is not invokable as no infringement of any fundamental right is alleged. It is submitted that in the absence of any statutory provision for the grant of pension to the whole time President or members of the State Commission, a writ of mandamus cannot be issued to the State to frame rules to benefit the Petitioner. So far the grant of pension to the Chairman of the Himachal Pradesh Administrative Tribunal and Lokayukta is concerned, the grant of said pension to these authorities is embodied in the respective Statutes under which they are appointed.

7. It is the case of the Respondents that rules governing the service conditions of

the Petitioner do not permit grant of pension to him and therefore, the Petitioner has no right to claim pension or seek mandamus to frame rules for the grant of pension.

8. We heard Mr. Anuj Nag, learned Counsel for the Petitioner, Mr. S.S. Mittal, learned Senior Counsel for the Respondent No. 1 and Mr. B.K. Sood, learned Additional Central Government Standing Counsel for Respondent No. 2. Mr. Nag also submitted written arguments, which are placed on record.

9. So far the contention of Mr. Nag that Sub-sections (2) of Section 16 of the Consumer Act itself envisages grant of pension by the Slate Government to the President of the State Commission, who is appointed on whole time basis, is concerned, it has no merit. Section 16(2) of the Consumer Act provides for the salary, honorarium and other allowances payable to and other terms and conditions of the service of the members of the State Commission, which includes the President of the Commission. Sub-sections (2) of Section 16 reads:

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the State Commission shall be such as may be prescribed by the State Government.

10. A bare persual of the above provision show that the members of the State Commission including its President are entitled to such salary and allowances as may be prescribed by the State Government under Clause (n) of Section 2(1) of the Consumer Act defines "prescribed" to mean prescribed by rules made by the State Government or as the case may be, by the Central Government. So far the State Government is concerned, the Government of Himachal Pradesh has framed "H.P. Consumer Protection Rules, 1988". Rule 13 of these Rules, provides for the salary, honorarium, allowances and other conditions of service of the President and Members of the State Commission. Rule 13 reads:

13. Salaries, honorarium and other allowances of the President and members of the State Commission.--(1) Where the President of the State Commission is a sitting Judge of the High Court, he shall enjoy all the benefits, which he should have enjoyed as sitting Judge of the High Court. Where the President is not a sitting Judge of the High Court, he shall receive a consolidated honorarium of Rs. 7,000/- per month, if appointed on whole-time basis or last pay drawn by him minus, pension granted to him or an honorarium of Rs. 300/- per day if appointed on part-time basis. Other members, if appointed on whole-time basis shall receive a consolidated honorarium of Rs. 1,500/- per month or if appointed on part-time basis a consolidated honorarium of Rs. 250/- per day for the sitting:

Provided that a member shall be eligible to any pension granted to him by the Government or any authority but honorarium plus pension shall not exceed the last pay drawn.

(2) The President and the members shall also be entitled to semi furnished accommodation.

(3) The President and the members shall be entitled to travelling and daily allowance on official tours at the same rates as are admissible to the highest Grade I Officer of the State Government.

(4) The honorarium or the salary, as the case may be, and other allowances shall be defrayed out of the Consolidated Fund of the State Government.

11. A bare perusal of the rule shows that pension is not contemplated to be paid to the President and Members of the State Commission.

12. It is true that pension is neither charity nor bounty. It is earned after rendering long service and is often described as deferred payment for past services but at the same time, in our view, right to pension must be founded either in the Statute or the rules governing the conditions of service of the claimant. It is well settled that grant of pensionary benefit is a condition of service. The employer has the power to change the conditions of service even unilaterally. In the present case, there is no provision, as noticed earlier, for the grant of pension to the President of the State Commission either in the Statute or the rules, governing conditions of service of the Petitioner or any other regulation. Mere fact that the Petitioner is entitled to pension after his retirement, as Judge of the High Court would not ipso facto make him entitled to pension for the service rendered as President of the State Commission.

13. Mr. Nag contended that the notification of appointment of the Petitioner stipulates that the Petitioner shall be entitled to salary, allowances and other perquisites, which were available to him at the time of his retirement. The pension being condition of service therefore, the Petitioner would be entitled to pension as admissible to the Chairman, Vice Chairman of the Central Administrative Tribunal and the Chairman of the Himachal Pradesh Administrative Tribunal.

14. So far the grant of pension to the Chairman and other Members of the Central Administrative Tribunal is concerned, the right is founded in the Statute itself. Section 10 of the Administrative Tribunals Act specifically provides for the grant of pension and other retirement benefits. Section 10 reads:

10. Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members.--The salaries and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, Vice Chairman and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Members shall be varied to his disadvantage after his appointment.

(Emphasis supplied)

15. It may be noticed that the salary, allowances and other terms and conditions

of service, including pension, gratuity and other retirement benefits of the Chairman, Vice Chairman and other Members is to be such as may be prescribed by the Central Government. Rule 8 of the H.P Administrative Tribunal (Salaries, Allowances and Conditions of Service of Chairman and Members) Rules, 1986 (Annexure-P-2) framed by the Central Government provides for pension at the rate of rupees 700/- per annum, for each completed years of service or a part thereof. However, the maximum pension is not to exceed rupees 3,500/- per annum. The Petitioner, in our view, cannot seek parity with Chairman of the State Administrative Tribunal for the grant of pension in the absence of such provision in the Consumer Act or rules or Regulations. We draw support for the view we have taken by the ratio in Arikaravula Sanyasi Raju Vs. Branch Manager, State Bank of India, Visakhapatnam (Andhra Pradesh) and others, wherein it has been held that pension cannot be granted dehors the rules for grant of such pension.

16. Mr. Nag relying upon Union of India and others Vs. Pratibha Bonnerjea and another, and Justice Nand Lal Ganguly v. State of L.L.P. and Anr. in Civil Misc. Writ Petition No. 18496 of 1999 decided on 12th August, 1999 by Allahabad High Court and contended that the Petitioner is entitled to add the service rendered by him as President of the State Commission to the service as Judge of the High Court for the purpose of grant of pension. The argument is fallacious and has no merit.

17. In Pratibha Bonnerjea the Petitioner was appointed as Judge of the High Court of Calcutta on 13.1.1978. She retired as such on 16.2.1989. She was appointed as Vice Chairman of the Central Administrative Tribunal on March 3, 1989 and laid down her office on February 16, 1992. She admittedly was entitled to pension after her retirement as Vice Chairman of the Tribunal under the Central Administrative Tribunal Act. She contended that her pension should be fixed under Part-I of the first Schedule to the High Court Judges (Conditions of Service) Act, 1954 (Act for short) whereas, the Union of India took a stand that she was entitled to pension admissible under Part III of the first Schedule of the Act. The Petitioner approached the Central Administrative Tribunal for relief. The Tribunal granted the relief. The Union of India filed SLP against the judgment of the Central Administrative Tribunal. The question, which was raised for consideration, was whether, under the Constitution, strictly there was relationship of master and servant between the Government and a High Court Judge. It was observed by the learned Judges that a Judge of a High Court occupies a unique position under the Constitution. He is a holder of a Constitutional office and is not a Government servant. A judge discharges judicial functions independently and impartially because he is not a Government servant and does not take orders from any Government. It is in this context. Their Lordships observed that a retired Judge of a High Court, who was not a Government servant, did not hold a post under the Union and State and therefore, would be entitled to pension under Part I of the Schedule to the Act. The ratio of this case is of no assistance to the Petitioner.

18. In Nand Lal Ganguly, the Petitioner was appointed as Presiding Officer of Industrial Tribunal, Allahabad. In the letter stipulating terms and conditions it was stated that the term of the Petitioner in the Industrial Tribunal shall not be added for the purpose of pension. However, this letter was subsequently modified and it was stated that as the Petitioner was Judge of the High Court, therefore, he would get the same salary and other benefits, which were available to him before retirement as High Court Judge. A Division Bench of the Allahabad High Court took a view that the Petitioner''s, service in the Industrial Tribunal will be added to his service as a High Court Judge for calculating the pension. The matter went to the Supreme Court in Special Leave to Appeal No. 12466 of 2000. On January 5, 2001, the SLP was dismissed in limini with the observations that the Petitioner was given benefit of guidelines issued by the Union of India dated October 8, 1987 through the Ministry of Law, Justice and Company Affairs which guidelines were adopted by the State Government on December 2, 1988. Their Lordships in the circumstances were "not inclined to interfere with the impugned order". In the present case, it is not the case of the Petitioner that the State Government has adopted the guidelines for the grant of pension as admissible to the Chairman and Members of the Himachal Pradesh Administrative Tribunal.

19. In our view, terminal benefits as well as pensionary benefits being conditions of service have to be founded either in the Statute or rules governing the conditions of service. It is for the Employer to lay down the conditions of service for a particular category of its employees. The Apex Court in Union of India and another Vs. Deoki Nandan Aggarwal, observed that the High Court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate. In Dcoki Nandan Aggarwal, the Petitioner before the High Court was elevated as a Judge of the Allahabad High Court in November, 1977. He retired on October 3, 1983. He elected to receive pension under Part I of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954 as he had put in only five years ten months and 17 days service as Judge of the High Court. Therefore, his pension was determined at rupees 8,400 per annum and family pension at the rate of rupees 250 per month. The Petitioner filed a writ petition before the Allahabad High Court praying for an order or direction declaring that he was entitled to refixation of his pension from the date of his retirement, i.e. October, 1983 to October 31, 1986 at rupees 9,600 per annum plus dearness allowance admissible under the rules from time to time on the basis that period of his service for pension could be enlarged to six years by addition of one month 13 days to five years 10 months and 17 days for the purpose of pension. The claim was made on the ground that power of the President u/s 16 of the Act though discretionary cannot be exercised arbitrarily or on extraneous or other unsupportable grounds. In this context, it was observed by the learned Judges:

...It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it, which are not there...The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitional harmony and comity of instrumentalities....

20. As the Legislature in its wisdom has not provided for pension to the President of the State Commission and for that reason even the President of the National Commission, therefore, this Court cannot read Section 16 of the Act to engraft and include provision for pension to the President of the State Commission.

21. Lastly, Mr. Nag contended that mandamus may be issued to the Respondents to frame necessary rules providing for pension to the President and the Members of the State Commission. The contention is misplaced. A mandamus is a most valuable and essential remedy for the administration of justice. It can only be issued if:

(a) the Petitioner has a clear legal right to the relief claimed by him;

(b) a clear duty imposed on the Respondents by law; and

(c) such duties of an imperative ministerial character without any discretion on the part of the Respondents.

22. In the present case, the Petitioner, as already discussed, has no legal right to the relief claimed by him. There is no duty imposed by law on the Respondents to make provision in the Statute or rules for the grant of pension to the President and Members of the State Commission. In this view of the matter, the Petitioner is not entitled to the discretionary relief of mandamus.

23. No other point was urged before us.

24. There is no merit in the petition. The same is dismissed with no order as to costs.

