
(2011) 11 MP CK 0040
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3277 of 2011

Justice R.D. Vyas (Retd.)

APPELLANT

Vs

The Accountant General

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Constitution of India, 1950 — Article 124, 14
High Court and Supreme Court Judges (Salaries and Conditions of Service)
(Amendment) Act, 2005 — Section 13A, 7

Citation : (2011) 11 MP CK 0040

Hon'ble Judges : Sushil Harkauli, Acting C.J.;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner is retired Judge of this Court has appeared and argued this case in person.
2. The petitioner was elevated to the Bench from the Bar and he retired as Judge of this Court on 6.4.2001. The grievance of the petitioner in this writ petition appears to be that the pension of the Judges elevated along with him from Judicial Service is more than the pension which is being paid to the petitioner. The petitioner has alleged discrimination in the matter of quantum of pension payable to the Judges elevated from the Bar as compared to the Judges elevated from the Judicial service. The petitioner, inter alia, has prayed for permission from this Court to prosecute the respondent No.1 and has also challenged the vires of the provisions of the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act of 2005 (herein referred to as the "2005 Amendment Act").
3. The first ground of challenge is based upon the provision in Section 13A as inserted by Section 7 of the 2005 Amendment Act. The said Section 13A reads as follows:

13A. Subject to the provisions of this Act, a period of ten years shall be added to the service of a Judge for the purposes of his pension, who qualified for appointment as such judge under subclause (b) of clause (3) of Article 124 of the Constitution.

4. The contention of the petitioner is that the above provision of adding a period of ten years to the service is applicable only to a Judge of the Supreme Court and there is no similar provision for Judges of the High Court. According to the petitioner, this period of ten years has been added to the service of the Supreme Court Judge because that is minimum period of practice required for such elevation to the Supreme Court. Further, according to the contention of the petitioner for appointment as a High Court Judge also there is a similar period of practice required, and therefore ten years period should also be added to the service of High Court Judge elevated from the Bar, for computation of pension.

5. We are unable to agree with the aforesaid contention. It is well settled that plea of discrimination can be raised if persons similarly situated are treated differently. It is difficult to hold that a Judge of the High Court and Judge of the Supreme Court are similarly situated, and therefore we are unable to accept the contention of the petitioner. Accordingly, it cannot be held that Section 13A of the Act as amended by 2005 Act is ultra vires as offending Article 14 of the Constitution of India.

6. The next contention of the petitioner is that the High Court Judges whether elevated from the service or from the Bar, rank at par. They get equal salary and equal perks while in service, and therefore they should be entitled to get equal pension.

7. We are unable to accept this submission also as while computing pension of Judges elevated from the service, the period during which they have rendered service in the Higher Judicial Service/Subordinate Judicial Service is taken into consideration subject to the formula for computation and subject to the ceiling limit. The pension which is paid corresponds to the period for which the Judges have served whether as a High Court Judge or a Judge of the Subordinate Court. Therefore, for computing pension, Judges elevated from the Bar whose tenure as Judge is less cannot be said to be similarly situated as High Court Judges elevated from the service. If the quantum of pension payable has been made proportionate to the period of service rendered, it cannot be dubbed as irrational. Therefore, the difference in computation of pension cannot be said to be discriminatory.

8. The petitioner then urged that the High Court and Supreme Court Judges (Salary & Conditions of Service) Act, 1954 has amended by the 1998 Amendment divides the High Court Judges in two parts, namely Part-I and Part-II Judges. This categorisation, according to the petitioner is in violation of the Constitution of India which does not contemplates any classification of High Court Judges as Part I or Part II Judges. This contention is also misconceived. The

impression which the petitioner has, or at least has argued is that the Judges of the High Court are being categorized as superior and inferior being placed under Part I or Part II is incorrect. No such categorization has been done. The parts mentioned in the Schedule of the Act merely amount to making charts for the purposes of computation of pension and for convenience of such computation. The Judges in one part are not being treated as superior or inferior to those in the other part. This division between parts is only for the purposes of computation. Therefore, such categorisation cannot be said to be in violation of the spirit of the Constitution of India, as argued by the petitioner.

9. The petitioner again submitted that he was appointed along with some other Judges who were elevated from service who are getting higher pension. This argument apart from being a repetition, has no factual foundation in the pleadings, and moreover has already been answered in the preceding paragraphs. However, we may point out that the pension of Judges of the High Court elevated from service has always been computed in a similar manner taking into account the service rendered by them in the subordinate judiciary. And this was, or at least should have been, well known to the petitioner when he accepted appointment as High Court Judge. Such appointment is not forced upon anybody and one accepts such appointment knowing the legal situation and the prospects fully. The petitioner has then argued that there was delay in release of his pension subsequent to his retirement. There is neither any prayer in the writ petition nor any ground in the writ petition nor any pleading in that behalf and, therefore, such oral submissions without any factual foundation cannot be entertained.

10. The petitioner has made a prayer that he should be allowed to prosecute the first respondent i.e. the Accountant General, Madhya Pradesh for the alleged wrong which the petitioner thinks has been done to him by the said Accountant General, in wrongly computing the petitioner's pension.

11. Firstly, it has not been demonstrated in this writ petition that such computation is wrong, and secondly no permission is required of this Court to prosecute anybody. Therefore, this prayer is misconceived.

12. No other submission was advanced. In view of what has been stated above, we do not find any merit in this writ petition. It is accordingly dismissed.