

(1998) 01 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 6158 of 1997

Justice (Retd.) S.N. Saxena

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

All India Services (Leave) Rules, 1955 — Rule 20, 20B, 22B
High Court Judges (Conditions of Service) Rules, 1956 — Rule 2
High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 3(4), 4, 4(1), 4(2), 5

Citation : (1998) 1 AWC 747 : (1999) 2 UPLBEC 84

Hon'ble Judges : S.H.A. Raza, J; Bhagwan Din, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.H.A. Raza and Bhagwan Din, JJ.—The grievance of the petitioner in this writ petition is that the sanction of payment of balance amount of leave encashment has not been received by the petitioner.

2. In the case of Union of India (UOI) Vs. Gurnam Singh, it was held by the Hon'ble Supreme Court that a retired Judge of the High Court is entitled to the payment of the cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his retirement in accordance with the provisions of Rule 20B of the All India Services (Leave) Rules, 1955 read with Rule 2 of the High Court Judges Rules, 1956.

3. On 18.2.1983. the Government of India, Ministry of Law, Justice and Company Affairs, New Delhi accordingly issued an order dated 18.2.1983 addressed to the Chief Secretaries of State Governments. Registrars of all High Courts, Registrar of Supreme Court, New Delhi, etc. for payment of cash equivalent of unutilised earned leave standing to the credit of Retired Judges of the Supreme Court and High Courts, at the time of their retirement.

4. Gurnam Singh (supra) was followed In Shiv Dayal Shrivastava Vs. Union of

India(UOI), . wherein it was observed that the benefit under Rule 20B of All India Services (Leave) Rules, 1955 regarding the payment of cash equivalent of leave salary on retirement is applicable to High Court Judges but Is not controlled by Chapter II of the High Court Judges (Conditions of Service) Act. The Scheme in Rule 20B is that the payment would be made suo motu and without any application for it, while the leave referred to under the Act is one which has to be asked for and is Intended to meet a different situation. For calculating the benefits under Rule 20B. Section 5(3) of the High Court Judges (Conditions of Service) Act, 1954 was not relevant and in case in the leave account maintained u/s 4 of the Act leave is due, the benefit under Rule 20B has to be worked out subject to the upper limit of 180 days, equal to six months. The principles governing the cash equivalent of leave would apply to the Judges who have already retired or who may retire hereafter, from the date from which this facility was made available to the members of the Central Services holding the rank of Secretary to the Government of India or its equivalent.

5. The aforesaid decisions of the Hon''ble Supreme Court were followed by this Court in Deoki Nandan Agarwal Vs. Union of India (UOI) and Others, wherein it was held that as per Rule 20B of the All India Services (Leave) Rules, 1955, a High Court Judge on his retirement becomes entitled to encash equivalent of unutilised earned leave standing to his credit in his leave account upto six months and that the amount to which he becomes entitled has to be worked out accordingly. Further, in computing the amount of cash equivalent the provisions in Sections 5, 5A. 6, 7, 8 and 9 of the High Court Judges (Conditions of Service) Act, 1954 are Irrelevant. It was further held that what has to be seen in such cases is as to how much unutilised leave stands to the credit of a Judge on the date of his retirement in his leave account irrespective of the basis on which the said account has been maintained. In the context, neither the fact that the maximum amount of leave which can be granted to a Judge on full allowances is not to exceed one twenty-fourth of the period of his actual service as laid down in Section 5(2), nor the circumstance that the petitioner did not take any step during the tenure of his service to have any portion of the leave due to him on half allowances converted into leave on full allowances has any bearing in calculating the amount to which a High Court Judge becomes entitled to receive in lieu of the unutilised leave standing to his credit on the date of his retirement. The stipulation in Section 4(1) of the Act laying down that leave account shall be kept for each Judge showing therein the amount of leave due to him in terms of leave on half allowances does not. In any way, affect the amount of earned leave which is credited to his leave account u/s 4(2) of the Act.

6. In the case of Satish Chandra v. Union of India and others. 1987 SCC 592 it was held :

"The maximum limit for payment of cash equivalent of leave to the credit of the Judges of the High Courts and the Supreme Court has been raised to 240 days from 180 days with effect from July 1, 1986 as In the case of those governed by

Rule 20B of the All India Service (Leave) Rules."

The Hon"ble Supreme Court further observed :

"We only wish to point out that as a result of the Judgment of this Court in Union of India v. Gumam Singh, the maximum limit of 240 days became automatically applicable to Judges as soon as It was made applicable to those governed by All India Services (Leave) Rules. It was not necessary for the Accountant Generals and the Pay and Accounts Officers to seek fresh instructions from the Government. We also point out that it has already been clarified in Shiv Dayal Srivastava v. Union of India, that in calculating the leave to the credit of a Judge the provisions of Section 4 alone were relevant and not those of Section 5 of the High Court Judges (Conditions of Service) Act. Since the leave account is maintained in terms of leave on half allowances, the leave is first to be converted to leave on full allowances by dividing by 2 the total amount of leave on half allowances standing to the credit of the Judge In the leave account. After this is done the Judge is entitled to be paid the cash equivalent upto a maximum of 180 days in the case of a Judge who has retired on or before June 30, 1986 and 240 days in the case of a Judge who has retired on or after July 1, 1986. What applies to Judges of the High Court applies mutatis mutandis to Judges of the Supreme Court. A direction Is issued to the respondent to calculate the amount of cash equivalent of leave to be paid to the petitioner in accordance with what we have now said."

7. In another Civil Misc. Writ Petition No. 8726 of 1988 filed by the Retired Judges, namely. Justice Mohd. Hamid Husaln, Justice S. B. Malik, Justice J. M. L. Sinha, Justice Gopi Nath and Justice K. N. Seth which was decided on 15.11.1988 by this Court, it was held after considering the decisions of the Hon"ble Supreme Court mentioned in the foregoing paragraphs that the Retired Judges of the High Courts are entitled to get cash equivalent of unutilised leave standing to their credit In their leave account at the time of retirement and the respondents were bound to pay the same to the Retired Judges. In this case, this Court also upheld the claim for interest at the rate of 12 per cent per annum with effect from the due date till the date of payment.

8. In G. K. Sharma v. State of Rajasthan, R.L.W. 91 (2) 380, decided on 23.4.1991, it was observed:

"In so far as the claim of the petitioner regarding cash equivalent to leave salary in respect of the period of earned leave at his credit at the time of his retirement is concerned, it may be noticed that by virtue of Rule 2 of the High Court Judges Rules, 1956, the provisions contained in the All India Services (Leave) Rules, 1955 have been made applicable. Rule 20B of the Rules of 1955 makes provision for payment of cash equivalent to leave salary. So far as the provisions of Chapter II of the Act of 1954 are concerned, those provisions deal with leave, which has been asked for and taken during the tenure of working of a Judge and Rule 20 makes provision for payment of cash equivalent to leave due. The

scheme of Rule 20B provides for suo motu payment of cash equivalent of leave due and there is no necessity of making any application for that purpose. As already held by Their Lordships of the Supreme Court in Shiv Dayal's case (supra), it has been held (that) the upper limit for payment of cash equivalent of 180 days' earned leave was applicable prior to the amendment made in the Rules in the Year 1986. Now the upper limit has been enhanced to 240 days. This fact has been impliedly recognised by the respondent No. 1 in its letter dated 30th October, 1990, whereby the sanction of the Governor has been conveyed to the petitioner for his entitlement to receive cash equivalent to leave salary in respect of unutilised 240 days' earned leave including dearness allowance on the date of his retirement. Reference in this letter has been made to the decision of Their Lordships of the Supreme Court in Satish Chandra's case (supra), Thus. In view of the letter dated 30th October, 1990, the claim of the petitioner for cash equivalent to leave salary in respect of 240 days of unutilised leave stands virtually admitted. However, an error which the respondent No. 1 has committed is that in the letter dated 30th October, 1990, a direction has been given to adjust the amount of Rs. 13,815 along with Interest at the rate of 12 per cent. The amount of Rs. 13,815 represents the cash received by the petitioner in lieu of the leave due to his credit at the time of retirement as member of the Rajasthan Higher Judicial Service. The admissibility of cash equivalent of leave salary in respect of the period of earned leave under Rule 20B of 1955 Rules, which have been made applicable by virtue of Rule 2 of the High Court Judges Rules has nothing to do with the cash equivalent of leave salary drawn by the petitioner on his retirement as a member of the Rajasthan Higher Judicial Service. That amount was paid to the petitioner for the leave earned by him as a member of Rajasthan Higher Judicial Service. As a Judge of the High Court, the petitioner had become entitled to get the benefit of cash equivalent of leave salary in respect of leave earned by him as Judge of the High Court. These two benefits are independent of each other and therefore, there could be no justification for adjusting the amount of Rs. 13,815 which was received by the petitioner as cash equivalent of leave salary in respect of the leave earned by him as a member of the Rajasthan Higher Judicial Service while calculating the amount of cash equivalent to leave salary in respect of the leave earned by him as Judge of the High Court. In our opinion, the respondent No. 1 has misconstrued the High Court Judges Rules read with All India Services (Leave) Rules, 1955."

9. The petitioner before his elevation as a Judge of this Court belonged to Higher Judicial Services from which he was to retire on 15.7.1992 to be made effective on 31st July, 1992, but before his retirement he was elevated to High Court on 7.7.1992 and on 15.7.1996 he retired as a High Court Judge.

10. Before his retirement from the Higher Judicial Services In accordance with the Rules his pension papers, etc. were prepared and the amount of Rs. 78,150 was debited as encashment leave earned by him to his account as a District Judge.

11. As the petitioner was to retire as a Judge of this Court on 15.7.1996, as per requirement of law, the petitioner submitted his papers seeking retrial benefits such as pension, gratuity, leave encashment of 240 days, etc. in consequence of retirement as a High Court Judge. As stated in the foregoing paragraph, the services of the High Court Judges are regulated by the provisions of High Court Judges (Condition of Services) Act No. 28 of 1954. By virtue of Sections 4 and 5 of the said Act, a High Court Judge is entitled to the leave on half allowances Instead of one-fourth of time spent by him on actual service. Subsection (4) of Section 3 of the Act provides that all the leave taken by the High Court Judge is to be debited in the leave account of the Judge. Separate leave account of the High Court Judge Is maintained by the Accountant General. U. P. The Act provides that wherever the Act is silent, the provisions of All India Services (Leave) Rules, 1955 shall be made applicable. Rule 20B of the said Rules reads as under:

"20B. Payment of cash equivalent of leave salary to a member of the service retiring from service on attaining the age of superannuation.--(1) The Government shall suo motu sanction to a member of the service who retires from the service under sub-rule (1) of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, the cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his retirement, subject to a maximum of (240 days):

Provided that a member of the service who attained the age of superannuation before the 30th September. 1977, and was on extension of service on or after the date shall be entitled to the cash equivalent of leave salary on his retirement from service, in respect of the earned leave that was refused to him in public interest and was carried forward to the period of extension reduced by the amount of earned leave availed of during such period, subject to a maximum of 180 days."

12. The contention of the petitioner is that if the Government of U. P. has paid the petitioner the leave encashment, treating him a retired member of U. P. Higher Judicial Services, even then he would be entitled for the payment of encashment under Rule 20B of All India Services (Leave) Rules, 1955 after adjustments of the amount of Rs. 78,150 only paid by the Government of U. P. to him treating him a retired member of U. P. Higher Judicial Services along with the appropriate Interest. In that regard, reference has been made by the petitioner that in similar circumstances, two Judges of the High Court, namely, Mr. Justice K. Narayan and Mr. Justice 1. S. Mathur, were paid the balance of 240 days leave encashment amount, after adjusting the amount of leave encashment paid by the Government of U. P. to them, treating them too as retired members of U. P. Higher Judicial Services although they were elevated to the Bench prior to the retirement as members of Higher Judicial Services like the petitioner. This aspect of the matter has not been denied by the respondent.

13. In the counter-affidavit dated 12th August. 1997 filed on behalf of

respondent No. 3, wherein it has been averred that the Government of India has clarified In the letter dated September, 1996 that under the existing provisions of the Rules, a Judge who has already availed the benefit of leave encashment of 240 days (maximum) at the time of elevation, is neither entitled further leave encashment on retirement as Judge of High Court nor revised encashment of leave subject to adjustment of payment made earlier under the State Service Rules. The total leave encashment of 240 days is admissible in entire service. Petitioner has availed the benefit of leave encashment at the time of elevation. He Is not entitled to further retrial benefit of leave encashment as a Judge of High Court, It was submitted that the Judges of Higher Judicial Services who are elevated to the Bench are not entitled to encashment of leave at the time of elevation, but the balance of leave at their credit on the date of elevation as High Court Judge Is carried forward to their leave account as High Court Judge.

14. Reliance was placed on a reference from Calcutta In the matter of Mr. Justice Bhattacharya. The Ministry of Law and Justice clarified that a Judge who has already availed the benefit of leave encashment of 240 days Is not entitled to further encashment of leave on retirement as Judge, High Court. So far as the encashment of leave in the case of Justice I. S. Mathur and Justice K. Narayan is concerned, it was submitted that in their cases payment authority was Issued In August, 1996 and 22nd December. 1995 before issuance of directions of Government of India, Department of Law and Justice.

15. We have minutely scrutinised the letter of Ministry of Law, Department of Justice, addressed to the Deputy Accountant General Issued In September, 1996 from which it transpires that in West Bengal, there existed no Higher Judicial Service Rules and the members of Higher Judicial Services were governed by All India Services under the special order Issued by the State Government. Under the said rules, the payment of amount of leave encashment ought to be made in lumpsum in one time settlement subject to maximum amount of 240 days.

16. We are definitely of the view that no Government Circular, direction or any other Rule would supersede Rule 22B of All India Services (Leave) Rules, 1955 as well as the provisions of Sections 4 and 5 of High Court Judges (Conditions of Service) Act. 1954. The Registrar, Supreme Court of India, New Delhi in his letter dated 16th December, 1988 sent to the Registrars of All High Courts which was issued and circulated by Union of India, Department of Justice clarified the said position in the following words :

"Insofar as the past cases of retired Judges are concerned, these may be reviewed and further encashment of leave allowed, if any, due to them in terms of Supreme Court's decision in Writ Petition No. 764 of 1987. This could be subject to maximum limit of 180 days with effect from 30.9.1977 to 30.6.1986 and 240 days w.e.f. 1.7.86 onwards. The revised encashment of leave shall, however, be subject to adjustment of encashment of leave allowed earlier."

17. The State of U. P. In its letter to the Accountant General dated 2nd May,

1997 which was Issued in the context of the petitioner Indicated its willingness for such adjustment. The Accounts Officer and Indian Audit and Accounts Department, Accountant General. U. P. Allahabad in its letter dated 5th May. 1997 authorised the petitioner to bring his leave encashment for 15 days only (total admissible 240 days (-) 225 days already taken-15 days) due on the date of retirement as High Court Judge. i.e., 15.7.1996 (AN) at the rate of Rs. 16.240. The petitioner is entitled to the amount payable in view of the leave earned by him subject to deduction of the amount already drawn by him.

18. The stand taken by respondents that under Rule 20B of the All India Services (Leave) Rules, encashment being one time settlement cannot be allowed to a High Court Judge if he has already received leave encashment as a Judge in the State Higher Judicial Service Is not substantiated by law. The Judge on retirement from Higher Judicial Services gets the leave encashment under the rules applicable to him as a Member of the State Judicial Services whereas the High Court Judge becomes entitled to leave encashment as a Judge of High Court under Rule 2 of High Court Judges Rules read with Rule 20B of the All India Services (Leave) Rules. The words "one time settlement" do not also connote the Idea that the leave encashment received under different rules can be taken into account while granting leave of encashment as a Judge of the High Court under different rules. We, therefore, reject this contention.

19. Under Rule 20B of the All India Services (Leave) Rules, it is the statutory duty of the Central Government to pay leave encashment suo motu on superannuation. The respondents have Illegally avoided to discharge this statutory obligation and have forced the Retired Judges to litigation. They are not only required to pay the leave encashment due as a High Court Judge but they are also required to pay interest at the rate of 12 per cent from the date of retirement till the date of superannuation.

20. We are given to understand that on the recommendation of the Fifth Pay Commission, the Central Government has issued orders raising the maximum ceiling of 240 to 300 days for leave encashment on superannuation with effect from 1.1.1996. Therefore, the Judges of the High Courts and the Supreme Court who retired after 1.1.1996 may be entitled to get leave encashment subject to the maximum ceiling of 300 days on the basis of the leave standing to their credit in their leave account as a High Court Judge/Supreme Court Judge. It has already been made clear that the leave account maintained in terms of leave on half allowances will have to be debited by the double amount of leave on full allowances by counting the leave on half allowances.

21. In view of what has been stated hereinabove, the writ petition succeeds. A writ in the nature of mandamus is issued commanding the respondents to pay to the petitioner the leave encashment benefits in consequence of his retirement on 15.7.1996 as a Judge of High Court of Judicature at Allahabad as contemplated by Rule 20B of the All India Services (Leave) Rules, 1955 after adjustment of the amount of Rs. 78.150 only paid by the Government of U. P. to the petitioner,

along with interest at the rate of 12 per cent within a period of eight months from the date of production of a certified copy of this order.