

(1994) 08 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 16941 of 1991

K.R. Chamayya

APPELLANT

Vs

Accountant General for Karnataka

RESPONDENT

Date of Decision : 04-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39D
Karnataka Administrative Tribunal Rules, 1986 — Rule 3

Citation : (1994) ILR (Kar) 2466 : (1994) 4 KarLJ 42

Hon'ble Judges : S.A. Hakeem, J;H.N. Tilhari, J

Bench : Division Bench

Advocate : K. Gopal Hegde, for the Appellant; J.M. Rajanna Setty, Addl. Central Govt. Stdg Counsel for R-1 and R-2 and K. Viswanath, HCGP for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Hakeem, J.—This Writ Petition is before us on a Reference made by the learned Single Judge u/s 9 of the Karnataka High Court Act, 1961.

2. Two main Questions that fall for Consideration in this Petition are:-

(1) Whether the proviso to Rule 3 of the Karnataka Administrative Tribunal (Salaries and Allowances and conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1986 (hereinafter referred to as "the Rules") is violative of Articles 14 16 and 39(d) of the Constitution of India? And

(2) Whether the expression "gross amount of pension" occurring in the proviso to Rule 3 of the Rules does not include the commuted portion of the pension?

3. The brief facts are as follows:-

The petitioner was earlier working as Secretary to the Government of Karnataka, in the Law Department, While holding that post, he was appointed by the 2nd respondent as a Member of the Karnataka Administrative Tribunal ("the

Tribunal") constituted under the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"). After taking voluntary retirement from the State Government service, the petitioner assumed office as a Member of the Tribunal on 6-10-1986. The State Government has sanctioned retirement pension, gratuity, etc., to the petitioner in respect of his service under the State as provided under the Rules governing pensionary benefits available to the State Government employees. Some time after he assumed office as a Member of the Tribunal, a portion of his pension was commuted and the petitioner received the commuted value thereof. Later, by an order dated 20-3-1991, the petitioner was appointed as the Vice-Chairman of the Tribunal and working as such on the date of the Petition.

4. The salaries and allowances payable to the Members or Vice-Chairman of the Tribunal and other terms and conditions of service applicable to the said offices are governed by the provisions of the Act and the Rules made under the Act. Rule 3 of the 1986 Rules which was in force at the time of the petitioner's appointment as a Member reads as follows:-

"Pay- The Chairman shall receive a pay of rupees three thousand five hundred plus a special pay of rupees two hundred fifty per mensem. A Vice Chairman shall receive a pay of rupees three thousand five hundred per mensem. A Member shall receive a pay of rupees three thousand per mensem.

Provided that in the case of an appointment as Chairman, a Vice- Chairman or a Member of a person who has retired as a Judge of a High Court or who has retired from service under the Central Government or a State Government and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of either pension or gratuity or both or employer's contribution to the Contributory Provident Fund or other forms of retirement benefits, the aforementioned pay shall be reduced by the gross amount of pension and pension equivalent of gratuity or employer's contribution to the Contributory Provident Fund or any other form of retirement benefits, if any, drawn or to be drawn by him."

(underlining by us)

Rule 3 was amended by Notification dated 4-4-1988 with retrospective effect from 1-1-1986 only to the extent of incorporating the enhanced pay scale to Rs. 8,000/- plus Special Pay for the Vice Chairman and Member's pay in the scale of Rs.7300-100-7600 per mensem. However, there was no change in the Proviso.

Still later, the Proviso to the Rule was substituted under GSR 1049 (E) dated 13-12-1989 with effect from 1-6-1988 by a new Proviso the English version of which reads as under:-

"Provided that in the case of an appointment as a Chairman, Vice- Chairman or a Member of a person who has retired as a Judge of a High Court or who has retired from service under the Central Government or a State Government and

who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension and or gratuity, employer's contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay shall be reduced by the gross amount of pension equivalent of service gratuity or employer's contribution to Contributory Provident Fund or any other form of retirement benefits, if any, but excluding pension equivalent of retirement gratuity, drawn or to be drawn by him."

(underlining by us)

5. Till about the month of May 1990, while issuing Pay Slips to the petitioner from time to time, the 1st respondent deducted from his pay an amount almost equal to the pension equivalent of retirement gratuity plus the actual pension drawn by him; that is to say, excluding the commuted portion of the pension. In the Pay Slip issued by him for the period commencing from 1-6-1990, the 1st respondent, for the first time, deducted from the pay, full pension, i.e., pension actually drawn plus the commuted portion thereof. By his letter dated 6-7-1990 (Annexure-B), the petitioner protested against such deduction and sought refund of Rs. 25,597-35 being the excess amount of salary paid from 6-10-1986 to 30-6-1990, since, according to him, the commuted portion of the pension was not deductible from his salary. Since then, the 1st respondent has been deducting the entire amount of pension; that is to say, pension actually drawn plus the commuted portion of the pension on that account as indicated in the Pay Slips. Thereafter, there was correspondence between the parties in which the petitioner maintained that the commuted portion of the pension is not deductible under the 1986 Rules as the same had ceased to be pension once the commuted value thereof is received by the petitioner. It appears that the 1st respondent had also sought the opinion of the Department of Personnel and Training, Government of India, in regard to the stand taken by the petitioner. A perusal of the relevant correspondence on record shows that the stand taken by the petitioner was not accepted and the 1st respondent took a decision to adjust an amount of Rs. 33,298/- representing the alleged excess salary paid to the petitioner while he was working as a Member and Vice-Chairman of the Tribunal. The action so taken, according to the petitioner, is arbitrary, illegal and unreasonable. We have heard Sri K. Gopal Hegde, learned Counsel for the petitioner and Sri J.M. Rajanna Setty, learned Additional Central Government Standing Counsel on behalf of respondents-1 and 2. No specific stand is taken or submissions made on behalf of the State Government.

6. Sri Gopal Hegde, learned Counsel for the petitioner, mainly urged the following propositions for consideration:-

(a) Proviso to Rule 3 of the 1986 Rules is void being violative of Articles 14 16 and 300-A of the Constitution and also in excess of the rule making powers of the Central Government;

(b) Alternatively, if the Proviso is held to be valid, the expression "gross amount

of pension" therein cannot be interpreted to include commuted portion of the pension the same having ceased to be pension on the said commuted value being paid, and hence does not come within the mischief of the Proviso;

(c) Pension cannot be deducted after 1-6-1988, since the amendment made to the rule in the year 1988 (effective from 1-6-1988) does not provide for such deduction.

7. A decision on the contentions urged, depends upon a proper interpretation of the Act and the Rules, some of which have already been referred to above.

8. Section 10 of the Act pertaining to the salaries and allowances etc. of the Chairman, Vice-Chairman and other Members of the Tribunal, reads as under:-

"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 Member shall be varied to his disadvantage after his appointment."

The power of the Central Government to make Rules, including the power to fix the salaries and allowances payable and the other terms and conditions of the Chairman, Vice-Chairman and the Members, is provided u/s 35 of the Act. The Rules are thus made by the Central Government.

9. The Proviso to Rule 3 of the 1986 Rules is challenged as being violative of Articles 14 16 39(d) and 300-A of the Constitution of India. According to the Proviso, the specified pay attached, inter alia, to the office of the Vice-Chairman and Member has to be reduced by the gross amount of pension and pension equivalent of gratuity etc., drawn or to be drawn by such Member, The contention of the petitioner is that the nature of duties and responsibilities of all the Members of the Tribunal being identical and/or similar, deduction of any amount on any account resulting in lesser pay being paid would amount to violation of the principle of equal pay for equal work. It is further contended that classification of Members of the Tribunal on the basis of pension received by any of them is, therefore, irrational and unreasonable, as it treats the Members differently in the matter of pay admissible to them. Hence, the Proviso is violative of Articles 14 16 and 39(d) of the Constitution.

The further contention on behalf of the petitioner is that while making a Rule, it is necessary to ensure that the direct and inevitable consequences thereof should not violate any Fundamental Right of the citizen under Part III of the Constitution of India, Reliance is placed upon the well-settled principle governing the concept of pension, viz., that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor is it an ex gratiayment. It is a

payment for the past service rendered. The right to receive a pension is a vested right which is governed by the Service Rules. In the circumstances, the petitioner, having acquired the right to receive the pension from the State Government, it is not liable to be deducted out of the salary which he is entitled to receive as a Member or Vice-Chairman of the Tribunal established under the Act. According to the learned Counsel, there is no nexus between his right to receive his pension for the service rendered under the State Government and his right to receive the salary as a Member or Vice-Chairman of the Tribunal under the Act. Furthermore, for such entitlement to the salary fixed for the offices under the 1986 Rules, no distinction or discrimination can be made between the Members of the Tribunal who are drawn from different sources. In other words, if Members are recruited from different sources and are integrated into one cadre, no discrimination can be made in regard to their conditions of service which includes the pay. Accordingly, there cannot be any difference in the pay admissible to a Member drawn from the Bar and retired Officer appointed as Members and hence the latter should get, notwithstanding the pension which he has earned by virtue of his past service, the same pay as the Advocate-Member would get. The classification, therefore, between the two sets of Members drawn from two sources would not be valid. According to the learned Counsel, there is no intelligible differentia between a Member drawing more pension and the Member drawing less or no pension for the purpose of their entitlement to the full salary fixed under Rule 3 of the 1986 Rules.

10. One of the objections taken on behalf of the respondents is to the effect that the petitioner, having accepted the appointment with full knowledge of the provisions of the 1986 Rules, it is not open to him to question the validity of the Proviso to Rule 3 after having drawn the pay fixed in accordance with the said Rules. This contention, in our opinion, has to be rejected in limine since there cannot be any estoppel against the Constitution and the principle can have no application to representations made regarding assertion or enforcement of Fundamental Rights. There can also be no waiver of Fundamental Rights as no citizen can barter away the rights conferred upon him by the Constitution. The concession made by him, whether under a mistake of law or otherwise, cannot create an estoppel against him in any proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution (vide: *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, 11). The Rules are made by virtue of the power vested in the Central Government u/s 35 of the Act prescribing the manner in which payment of the salary to the Chairman, Vice-Chairman or Member is to be computed having regard to the amount of pension being received by the Member drawn from that source. Reliance is placed upon analogous provisions with regard to the deduction of commuted portion of the pension applicable to the Supreme Court and High Court Judges which are incorporated in the Second Schedule to the Constitution and which have never been questioned as violative of the Constitutional rights. However, on behalf of the petitioner, an argument is sought to be advanced, inter alia, to the effect that

the provisions in the Second Schedule relating to deduction from pay of the Judges is protected from challenge on the ground of violation of Articles 14 and 16 of the Constitution by virtue of the Decision of the Supreme Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, while no such protection is available in respect of Rule 3 of the 1986 Rules, validity whereof has to be decided with reference to Part-III of the Constitution.

12. Yet another contention urged on behalf of the petitioner is that prior to the Decision of the Supreme Court in the case of Deokinandan Prasad Vs. The State of Bihar and Others, pension was considered as a bounty depending upon the will of the employer which could be withdrawn at any time. It is only after Deokinandan's case, the concept of pension changed since it is held to be a valuable right vesting in a Government servant. It is in the nature of a deferred payment of the amount which a Government employee has earned on account of his service to the State beyond a prescribed period. However, it is not possible to accept this contention that the concept of pension was defined for the first time in Deokinandan's case or such a right was not in existence when the Second Schedule to the Constitution was incorporated. The respondents are, therefore, justified in drawing sustenance from the provisions in the Second Schedule applicable to the Supreme Court and High Court Judges providing for deduction of equivalent of the pension from the salary which becomes payable to them in the event of their re-employment.

13. On behalf of the Central Government, it is maintained that the amended Proviso of the rule as it stands also does not warrant the interpretation sought to be placed upon it by the petitioner so as to exclude his case from the general rule regarding deduction of the "gross" pension, including the commuted portion thereof, for the purpose of computing the net salary payable to the Vice-Chairman, Alternatively, it is submitted that the omission of the words "pension equivalent" is a mistake in the English version of the Rule. In other words, the said words are found incorporated in the Hindi version which is published in the Official Gazette. In this connection, reference is made to Article 348 of the Constitution of India and the provisions of the Official Languages Act, 1963. Article 348 of the Constitution provides, inter alia, that the authoritative text of all Bills to be introduced or amendments introduced in the Parliament shall be in English language until the Parliament by law otherwise provides. The Official Languages Act came into force on 26-1-1965. u/s 5 of the said Act, a translation in Hindi published under the authority of the President in the Official Gazette of any Central Act, Order, Rule, Regulation etc., issued under the Constitution or under any Central Act shall be deemed to be the authoritative text thereof in Hindi. Section 6 pertains to authorisation of Hindi translation of State Acts, with which we are not concerned presently.

14. In Firm Amar Nath Bashesar Dass Vs. Tek Chand, referring to the duty of the Court in interpretation of statutes, the Supreme Court has observed thus:-

".... It cannot, however, be gain-said that one of the duties imposed on the

Courts in interpreting a particular provision of law, rule or notification is to ascertain the meaning and intendment of the legislature or of the delegate, which in exercise of the powers conferred on it, has made the rule or notification in question. In doing so, we must always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that which it sought to achieve..."

15. Sri Gopal Hegde, learned Counsel for the petitioner, sought to rely upon the Decision in *Union of India v. Deoki Nandan Aggarwal*, for the proposition that assuming that there is a defect or omission in the words used by the Legislature, the Court could not go to its aid to correct or make up the deficiency. It is, however, further held that the Court of course adopts a construction which would carry out the obvious intention of the Legislature but could not legislate itself. While the said principle cannot be disputed, the fact situation in the instant case is different.

16. The Administrative Tribunals Act, 1985, being a Central enactment, is published in the Official Gazette, both in Hindi and English. The learned Counsel for the petitioner advanced his contention solely on the basis of the English version of the 1986 Rules as amended from time to time. It seems to us that, whenever a doubt arises as to the actual intent and for the purpose of properly interpreting any provision therein, it is perfectly valid to look up to the Hindi version thereof. In the instant case, the Hindi version has the words "pension and pension equivalent of gratuity", which are missing in the English version. This omission cannot be but accidental. It appears to be well settled that both Hindi version as also the English translation of an Act, Rule etc., are valid. There is no competition between the two. It is only in case of conflict or divergence between the two versions that the question of following the authoritative text comes in.

17. In *J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another*, a question arose as to whether the Hindi version could be used to clear what appeared to be ambiguous in the English version of the U.P. Sales Tax (Validation) Act, 1958. It is held that a construction of a provision of the Act which will lead to a failure to achieve the object of the Act as stated in its Preamble must, if that is possible, be avoided. The Apex Court has further stated thus:-

"..... It should further be noted that the Validation Act was published both in Hindi and in English, and both of them were authorised versions. The words in the Hindi version makes it clear beyond all doubt that the words, "in the form in which they were in force immediately before the commencement of this Act" qualify the word "sections" and not the word "notifications".

18. On the Rule of harmonized construction of the provisions in a statute, a reference may be made to the Ruling in *Hameedia Hardware Stores*, represented

by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, where the observations of Lord Denning, L.J. in SEAFORD COURT ESTATES LTD. v. ASHER 7. (1949) 2 ALLER 155 , are referred with approval. It reads thus:-

"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament... and then he must supplement the written word so as to give "force and life" to the intention of the legislature... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

This rule of construction is quoted with approval by this Court in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, and it is also referred to by Beg, C.J. in Bangalore Water Supply & Sewerage Board v. R. Rajappa."

19. Strong reliance is placed upon the Ruling of this Court in Steel Authority of India Ltd. Vs. Steel Authority of India Ltd. Contract Workers" Union, After referring to the dictum of Lord Denning (supra), Shivashankar Bhat, J speaking for the Full Bench, has observed thus:-

"The job of ironing out the creases is quite different and distinct from the tailoring work. The Court cannot add the material not used by the Legislature while conveying its intention in enacting a particular provision. Interpretative skill has to be applied when there is a genuine ambiguity in the statute in question. The Court cannot assume that a particular intention was sought to be effectuated by the Legislature while enacting the law even though the words needed to effectuate that intention were not used in fact."

The ratio of the Decision is squarely applicable to the instant case. It is undoubtedly a case requiring "ironing out the creases" on account of the genuine ambiguity resulting from the omission of a word in the English version of the Rule, but found in the authoritative Hindi version thereof.

20. In that view of the matter, it is not possible to agree with the petitioner's interpretation of the "Proviso which would be unreasonable and contrary to the intent of the Act. Hence, we are of the opinion that notwithstanding the omission of the expression "pension equivalent" in the English text of the Proviso to Rule 3 of the 1986 Rules, there is no change in the intent and purpose thereof to deduct "gross pension" including the commuted portion thereof in computing the actual amount payable to a Member or Vice Chairman of the Tribunal towards his salary.

21. The alternate stand taken by the petitioner appears to be that the commuted part of the pension ceases to be pension for all purposes. As such, the "gross pension" referred to in the Proviso to Rule 3 can mean only the actual pension drawn by the petitioner. We are unable to agree with this contention either. In this connection, our attention is drawn to Rule 316(b) of the Karnataka Civil

Services Rules pertaining to re-employment of pensioners, under which the petitioner's pension has been fixed and computed. It reads thus:-

"(b) In the case of a pensioner, a portion of whose pension has been commuted before re-employment, the original amount of the pension should be taken into consideration in fixing the total receipts during re-employment or continued employment and not merely the un-commuted pension."

22. In this connection, we may also refer to the "Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. This Order which came into force on 1-7-1986 is applicable to all persons who are re-employed in Civil Services and posts in connection with the affairs of the Union Government after retirement on pension, gratuity etc., and from the services of State Governments. Pension is defined in Clause 3 thereof as under:-

"Pension means the gross monthly pension and/or pension equivalent of Death-cum-Retirement Gratuity and/or pension equivalent of Gratuity or Government's contribution to Contributory Provident Fund and/or other retirement benefits, if any, payable under the Central Civil Services (Pension) Rules, 1972, or the relevant rules of the Government or body under which the re-employed pensioner was serving prior to his retirement. Where pension has been commuted partly or fully, pension means the gross pension payable prior to commutation."

(underlining ours)

On this basis, the Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, New Delhi, has taken the view that the word "Gross Pension" in the Proviso to Rule 3 of the Rules will include all pension including commuted pension. There is no merit in the petitioner's challenge to the above order on the ground that the Central Government has no legislative competence to legislate regarding payment of salary.

23. In *Common Cause, A Registered Society and Others Vs. Union of India (UOI)*, while interpreting Rules 4 and 5 of the Central Civil Services (Commutation of Pension) Rules, 1981, the Supreme Court has observed thus:-

"..... The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation - (1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule

The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place."

This concept of the pension and commutation thereof which is covered under the Rules cannot be disputed at all. In fact, it is not seriously disputed that the deduction of the amount of commuted pension is in the nature of recovery of the amount paid to him as commuted pension. It is further not disputed that the Dearness Allowance and other allowances payable to the pensioner are computed on the gross pension and paid to the pensioner and what is deducted is only the actual commuted part of the pension.

24. Sri Gopal Hegde sought to rely upon the Decision in *Deokinandan Prasad v. State of Bihar*, in which the Supreme Court has affirmed that the right to pension flows from Rules and not the order granting the pension. The grant of pension does not depend upon an order being, passed by the authorities to that effect. It may be that for the purposes of quantifying the amount, having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The right to receive pension being property within Article 31(1), it is held that the State has no power by an executive order to withhold the same. The said case pertains to the claim of a retired pensioner who was undoubtedly entitled to his pension as a vested right and it is not with reference to a case of a Government servant on re-employment after retirement. As such, the said case has no application to the question involved in the instant case. Similarly, the Decision in *Randhir Singh Vs. Union of India (UOI) and Others*, affirming the principle of equal pay for equal work, non observation of which would amount to violation of Articles 14 and 16, is also not applicable for the purpose of determining the question involved in the instant case as to the computation of the salary payable to the petitioner out of public funds after deducting the gross pension payable to him.

25. Sri Gopal Hegde further sought to rely upon the Ruling in *The Municipal Council, Salem Vs. B. Gururajah Rao*, which has been referred to and distinguished by the Supreme Court in *Union of India (UOI) and Another Vs. Wing Commander R.R. Hingorani (Retd.)*, in the following passage:-

"..... In an English case in *Crowe v. Price* (1889) 58 LJ QB 215 it was held that money paid to a retired officer of His Majesty's force for the commutation of his pension does not retain its character as pension so as to prevent it from being taken in execution. On p. 217 of the report, Coleridge, C.J. said:

"It is clear to me that commutation money stands on an entirely different ground from pension money, and that if an officer commutes his pension for a capital sum paid down, the rules which apply to pension money and make any assignment of it void, do not apply to this sum."

Following the dictum of Coleridge, C.J., Besley, C.J. and King, J. in *The Municipal Council, Salem Vs. B. Gururajah Rao*, held that when pension or portion thereof is commuted, it ceases to be pension and becomes a capital sum. The question in that case was whether the commuted portion of the pension of a retired

Subordinate Judge was income for the purposes of assessment of professional tax u/s 354 of the Madras District Municipalities Act, 1920. The learned judges held that where pension is commuted there is no longer any periodical payment; the pensioner receives once and for all a lump sum in lieu of the periodical payments. The pension is changed into something else and becomes a capital sum. On that view they held that the sum received by the retired Subordinate Judge in lieu of the portion of his pension when it was commuted was no longer pension and therefore not liable to pay a professional tax u/s 354 of the Madras District Municipalities Act. That is to say, the commuted portion of the pension was not income for purposes of assessment of professional tax in a municipality....."

It is thus clear that the ratio of the Decision is not applicable to the question involved in the instant case.

26. Reliance is also placed upon the Decision in Shiveshwar Prasad Sinha Vs. Union of India (UOI) and Others, This was a case pertaining to a sitting Judge of a High Court becoming Chairman of Administrative Tribunal; later retiring as High Court Judge but continuing as Chairman. On retirement as a Judge, his pension was fixed at Rs. 1,067/- per month and he was to be paid, while working as Chairman, salary on the basis of the difference between Rs. 3,500/- and the pension. But he was paid monthly salary at the rate of Rs. 2,263/- and a sum of Rs. 170/- was withheld from the salary. In that case also, the petitioner (Judge) had not claimed anything beyond Rs. 3,500/- including the pension and, according to him, after deducting the pension of Rs. 1,067/- per month, he was entitled to the balance sum of Rs. 2,433/- and, out of that, the sum of Rs. 170/- as pension equivalent of gratuity was not deductible every month. In the facts and circumstances of the case, the Court has observed that the principle in the provisions contained in Clause 9(1)(c) of Part D of Schedule II of the Constitution had no application where the Judge has retired and he undertakes a different service on contractual basis and hence there was no justification for directing recovery of the pension equivalent of gratuity at the rate of Rs. 170/- per month. This case is also of no assistance to the petitioner. On the contrary, it affirms the principle of deduction of pension from the total salary payable to the Chairman of the Tribunal.

27. In M.B. Majumdar Vs. Union of India, the Supreme Court has held that the Members of the Administrative Tribunal cannot be treated at par with the Vice-Chairman in matters of pay, age of superannuation and other conditions of service. They constituted a distinct class under the Act. Hence, no hostile discrimination is created. Principle of equal pay for equal work is inapplicable in such a case. The equality claimed by the Members of the Administrative Tribunal with the Judges of the High Courts or even the Vice-Chairman of the Tribunal in the matter of pay and age of superannuation does not exist being contrary to the pattern and scheme of the parent statute establishing the Tribunal and, therefore, the very foundation for the argument of discrimination is non-existent.

This Decision, in our opinion, appears to be against the stand taken by the petitioner.

28. This takes us to the petitioner's claim for refund of the amount of Rs.25,815/- adjusted by the 1st respondent as arrears of pensionary benefits towards excess salary drawn by the petitioner as being arbitrary and violative of the principle against attachment of the pensionary benefits. Admittedly, this amount became payable to the petitioner towards arrears of pension consequent on a judgment of the Tribunal in a Writ Petition questioning the qualifying service worked out by the 1st respondent while determining the petitioner's pension. According to the 1st respondent the amount recoverable from the petitioner increased from Rs. 25,597-35 to Rs. 33,130/- on account of further increase in pension authorised to him with retrospective effect. Out of this amount, Rs. 25,815/- was adjusted and the balance amount of Rs. 7,315/- was directed to be recovered in 15 instalments. This amount having been received on account of pension, the recovery thereof from the excess payment made without deduction of such amount which also forms part of the gross pension, was recoverable.

In the view we have taken above regarding the requirement of deduction of the gross pension, including the commuted portion of such pension, the question of refund of any amount with interest thereon as claimed, does not arise. In the circumstances both the Questions arising in this Petition are answered in the negative.

29. In the result, the Writ Petition is dismissed. Rule is discharged. In the circumstances, the parties shall bear their own costs.

Soon after the pronouncement of the order, Sri. Gopal Hegde, learned Counsel for the petitioner, sought leave to file an Appeal before the Supreme Court. In our opinion, this is not a fit case for grant of Certificate. The application is rejected.