

(2001) 12 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3890 of 2000

Mahendra Bhushan Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Lokayukta and Uplokyukta (Conditions of Service) Rules, 1974 — Rule 13, 6
Rajasthan Lokayukta and Up-Lokayukta Act, 1973 — Section 21, 5(4)

Citation : (2002) 4 RLW 1966 : (2002) 2 WLC 55 : (2002) 4 WLN 531

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : Bharat Vyas, for the Appellant; R.N. Mathur, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Naolekar, J.—Brief facts relevant for adjudication of the question involved in the case are that the petitioner has retired on 30.9.1993 as a Judge of the High Court. He was appointed as Lokayukta on 6.7.1994 for a period of five years u/s 3 of the Rajasthan Lokayukta and Up-Lokayukta Act, 1973. The petitioner, after completing his tenure of five years, retired from the post of Lokayukta on 6.7.1999. Pension papers of the petitioner were submitted by the Secretary, Lokayukta Secretariat, to the Principal Secretary to the Government, Department of Personnel (Gr.A-III), Government of Rajasthan, in the month of April, 1999 i.e. much before the date of retirement. The pension papers submitted by the petitioner claimed pension for the services rendered as Lokayukta for Five years at the rate of Rs. 14630/- for every completed year of service aggregating to Rs. 73150/- per annum. The petitioner has also claimed recomputation of the amount of gratuity on the basis of pay with Dearness Allowance payable to him treating his service of Lokayukta separate for the purpose of calculating the amount of gratuity, and the right to have the family pension.

2. The Government of Rajasthan did not decide the pension matter of the

petitioner for a long period but vide its order dated 6.12.1999 it has been ordered that the petitioner, who superannuated on 6.7.1999 after completion of five years as Lokayukta be paid Rs. 34,864/- per annum pension with effect from 7.7.1999 in addition to the pension he was drawing as a retired Judge of the High Court. The order passed by the State Government is Annexure-2 to the petition. It appears that the State Government has clubbed the services rendered by the petitioner as Judge of the High Court and as a Lokayukta together for the purpose of calculation of his pension as Lokayukta and the pension has been fixed on the post of Lokayukta keeping the maximum pension payable to the retired Chief Justice of the High Court.

3. The State has entered appearance and the alleged in its return that the petitioner is not entitled for computation of the pension as retired Lokayukta independent of the ceiling limit prescribed in respect of pension payable to the retired Chief Justice of the High Court treating services of the Lokayukta as Independent service and the petitioner being the retired High Court Judge is subject to the High Court Judge (Conditions of Service) Act, 1954.

4. Admittedly, the petitioner's pension shall be fixed in accordance with the Rajasthan Lokayukta and Up-Lokayukta Act, 1973 (hereinafter shall be referred to as "the Act of 1973"), the High Court Judges (Conditions of Service) and, 1954 (for short "the Act of 1954;") and the Rajasthan Lokayukta and Up-Lokayukta (Conditions of Service) Rules, 1974 (for short "the Rules of 1974").

5. It would be profitable to note the provisions of the Acts and the Rules at the threshold itself.

Sub-section (4) of Section 5 of the Act of 1973.

"(4) The salary, allowances and pension, payable to and conditions of service of the Lokayukta or Up-Lokayukta shall respectively be the same as those of the Chief Justice or a Judge of the High Court of Rajasthan:

Provided that the allowances and pension payable to and other conditions of service of the Lokayukta or Up-Lokayukta shall not be varied to his disadvantage after his appointment:

Relevant provision of Section 21:

21. Power to make rules - (1) The Governor may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for-

(b) the allowances and pension payable to and other conditions of service of, the Lokayukta and Up-Lokayukta;

(e) any other matter which is to be or may be prescribed or in respect of which

this Act makes no provision or makes insufficient provisions and provision is in the opinion of the Governor necessary for the proper implementation of this Act."

Rule 6 of the Rules of 1974

"6. Pension payable - The Lokayukta and Up-Lokayukta in respect of each completed year of service as Lokayukta and the Up-Lokayukta respectively shall be paid pension at the rates applicable from time to time in the case of Chief Justice and Judges of the High Court"

Rule-13

"13. Other conditions of service. - The conditions of service of the Lokayukta and the Up-Lokayukta, for which no express provision has been made in the Act or these Rules, shall be the same as are applicable respectively to the Chief Justice and the other Judges of the High Court at the commencement of these Rules, and as amended from time to time."

6. First Schedule to the Act of 1954 to the extent necessary, dealing with the manner of computation of pension of Judges, is reproduced as under:-

The First Schedule - Pension of Judges - Part -I

1. The provisions of this-part apply to a Judge who is not a member of the Indian Civil Service or has not held any other pensionable post under the Union or a State and also apply to a Judge who, being a member of the Indian Civil Service or having held any other pensionable post under the Union or a State, has elected to receive the pension payable under this part.

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 of Chief Justice in High Court, Rs. 14630 per annum for each completed year of service.

(b) for service as any other Judge in any High Court, Rs. 11,050 per annum for each completed year of service.

Provided that the pension under this paragraph shall in no case exceed Rs. 1,80,000 per annum in the case of the Chief Justice and Rs. 1,56,000 per annum in the case of any other Judge."

7. Section 17 A of the Act of 1954 is reproduced as under:-

"17 A - Family pension and gratuities : Where a Judge who, being in service on or after the commencement of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, dies, whether before or after retirement in circumstances to which Section 17 does not apply, family pension calculated at the rate of sixty per cent of the pension admissible to him on the date of his death shall be payable to the person or persons entitled thereto and

the amount so payable shall be paid from the day following the date of death of the Judge for a period of seven years or for a period upto the date on which the Judge would have attained the age of sixty-five years had he survived, whichever is earlier, and thereafter at the rate of half of the family pension so admissible subject to a minimum of one thousand two hundred and seventy five rupees per month"

8. Submission of the learned counsel for the petitioner is that the service of Lokayukta under the Act of 1973 is a service separate and independent of the appointment as a High Court Judge under the Constitution of India and, therefore, the pension of the Lokayukta has to be fixed separately without there being any ceiling of maximum pension as provided in the proviso to part I of the First Schedule attached to the Act of 1954 wherein it is said that pension under this paragraph shall in no case exceed Rs. 1,80,000 per annum in case of Chief Justice and Rs. 1,56,000 per annum in the case of any other Judge. It is further urged that the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, under its notification dated 27th of October, 1997 made amendments whereby the term "Emoluments" has been defined which indicates that the emolument shall also include Dearness Allowance admissible on the date of retirement/death and, therefore, while calculating the gratuity of the petitioner on the post of Lokayukta his emoluments shall be basic pay plus (+) dearness allowance admissible on the date of retirement.

9. Under Sub-section (4) of Section 5 of the Act of 1973, the salary, allowances and pension payable to and conditions of service of Lokayukta shall be some as of the Chief Justice and the allowances and pension payable to and any other condition of service of Lokayukta shall not be varied to its disadvantage after his appointment. Section 22 of the Act gives an authority to the Governor to make Rules by issuance of notification published in the Official Gazette, for purpose of carrying into effect the Act of 1973. Section 21 (2)(b) of the Act of 1973 authorises framing of the Rules in respect of allowances and pension payable to any any other condition of service of Lokayukta and Up- Lokayukta. Rule 6 of the Rules of 1974 framed u/s 21 of the Act of 1973, provides for pension, under it Lokayukta is entitled for a pension, at the rate applicable from time to time in case of Chief Justice, for each completed year of service as Lokayukta. Rule 13 provides that where there is no express provision made in the Act or under the Rules the condition of service of Lokayukta shall be as applicable to the chief Justice of the High Court at the commencement of these Rules and as amended from time to time. Rule 6 of the Rules of 1974 provides that Lokayukta shall be paid pension at the rate applicable, from time to time, in case of Chief Justice. Therefore, Lokayukta shall be paid pension at the rate it is payable to Chief Justice. Rate so provide is for the purposes of calculation of the pension of the Lokayukta. Rate does not provide for maximum amount of pension payable to Lokayukta. There is no ceiling limit on the pension of the Lokayukta.

10. It is alleged in the petition that Justice M.L. Joshi, a retired Judge of the Rajasthan High Court, was appointed as Lokayukta u/s 3 of the Act of 1973 on 1.7.1983 for a period of three years, as then by amendment in the Act, the tenure was reduced from five years to three years but later on it was restored to five years, and on completion of this tenure as Lokayukta he was paid pension for every completed year of service at the rate then applicable to the Chief Justice of the High Court. After amendment in the Act of 1954 the pension of Justice M.L. Joshi was also revised.

11. It is further alleged that Justice M.L. Shrimal, who was earlier a Judge of the Rajasthan High Court and retired as a Chief Justice of Sikkim High Court, was appointed as Lokayukta on 3.1.1985. On completion of his tenure of five years in the afternoon of 3rd of January, 1990, orders were issued for payment of his pension at the rate of Rs. 18630/- per annum instead of Rs. 22, 500/-, as required to be paid, which was in addition to the pension he was getting as Chief Justice of Sikkim High Court imposing a ceiling of Rs. 54000/- on the ground that under the Act of 1954 the pension of the Chief Justice of the High Court, in no case, would exceed to Rs. 54,000/- per annum. The pension as a Chief Justice of the High Court and Lokayukta were clubbed so as not to exceed the maximum pension payable to a Chief Justice under the Act of 1954. Justice M.L. Shrimal represented against the fixation of his pension on the ground that his service as Lokayukta was independent and under the provisions of the Act and the Rules made thereunder he was entitled to pension as Lokayukta independent of an in addition to any previous pension payable to him as Chief Justice of the Sikkim High Court. The State Government agreeing with the contentions of Justice M.L. Shrimal under its order dated 4.10.1993 for a five year tenure as Lokayukta, ordered for payment of pension of Rs. 22,500/- per annum which is in addition to the pension which Justice M.L. Shrimal was getting as Chief Justice of the Sikkim High Court.

12. Allegations made in the petition so far as they relate to payment of additional pension on the post of Lokayukta for two retired Judges irrespective of the ceiling on the pension of the Chief Justice have not been denied by the State in its return.

13. Thus, service of Lokayukta under the Act of 1973 has been treated consistently by the State Government as service separate and independent of the appointment as High Court Judge under the Constitution of India. The State Government allowed pension to retired Lokayukta with reference to the Act of 1973 and the Rules of 1974 without clubbing the pension of retired Lokayukta with the pension of the High Court Judge/Chief Justice and without reference to Maximum ceiling limit provided to the pension payable to the Chief Justice under the Act of 1954.

14. The gratuity is payable to a retired Judge under the provisions of the Act of 1954 which is extended to the Lokayukta also by virtue of Rule 13 of the Rules of 1974 which says that the condition of service of Lokayukta and Up-Lokayukta,

for which no express provision has been made in the Act or these Rules, shall be the same as are applicable respectively to the Chief Justice and other Judges of the High Court at the commencement of the Rules and as amended from time to time. By virtue of Rule 13, the gratuity which is payable to the retired Judge of the High Court under the Act of 1954 is also payable to the Lokayukta.

15. As per the petitioner he was paid gratuity at the rate of 20 days for each completed year of service and accordingly he was paid gratuity for 100 days but while calculating the amount of gratuity the salary payable at the time of his retirement was taken into consideration and not the dearness allowance payable at the time. As per the petitioner, for the purposes of calculating the gratuity his salary would be basic pay plus dearness allowance paid at the time of retirement. The petitioner has placed reliance on the Circular O.M. No. 45786797-P&PW(A)-Part- A, dated 27th of October, 1997 issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare which made amendment as under:--

"Emoluments"

4.1 the term "Emoluments" for purposes of calculating various pensionary benefits other than Retirement/Death Gratuity shall mean basic pay as defined in FR 9(21)(a)(i) which the Government servant was receiving immediately before his retirement or on the date of his death.

4.2 The term "Pay" in these orders means the pay in the revised scales promulgated under the CCS (Revised Pay) Rules, 1997.

4.3 In the case of retirement/Death Gratuity, DA admissible on the date of retirement/death shall also be treated as emoluments along with the emoluments as defined in Paragraph 4.1 above. Accordingly, Rule 50 (5) of Pension Rules, shall stand modified to the effect that the emoluments for the purpose of gratuity admissible under this Rule shall be reckoned in accordance with Rule 33 and in addition DA admissible on the date of retirement/death of the Government employee shall also be treated as emolument."

16. It is clear from the aforesaid Circular that the term "emoluments" for the purposes of calculating various pensionary benefits would be "basic pay" as defined in FR 9(21)(a)(i) which the Government servant was receiving immediately before his retirement or on the date of his death. The Basic pay shall not be emoluments for the retirement/death gratuity. Under Clause 4.2 the term "pay" in the order would mean the pay in the revised scales promulgated under the CCS (Revised Pay) Rules, 1997 i.e. the revised pay scale. Under Clause 4.3 in the case of retirement/death gratuity, DA admissible on the date of retirement/death shall also be treated as emoluments along with the emoluments as defined in Paragraph 4.1 above. Thus, for the purposes of gratuity "emoluments" shall include the pay as defined in FR 9(21)(a)(i) plus Dearness Allowance admissible on the date of retirement/death. Under the Government Circular the petitioner would be entitled to a gratuity calculated on

the pay plus dearness allowance which he was entitled to at the time of his retirement. So far the petitioner's claim for family pension is concerned, I do not think it proper to pass any order at this stage. It shall be open to be adjudicated if an when occasion arises.

17. For the aforesaid reasons, the petition is allowed and the respondents are directed to pay the pension to the petitioner for the post of Lokayukta treating the petitioner's service as lokayukta independent then that of a High Court Judge and without putting the ceiling limit on his pension as prescribed under the Act of 1954. The petitioner shall be paid gratuity calculating the same on his pay as defined in FR 9(21)(a)(i) plus Dearness Allowance admissible on the date of his retirement.