

(2013) 05 MP CK 0018

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 4409 of 2010

N.K. Jain

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Constitution of India, 1950 — Article 221(2)

Consumer Protection Act, 1986 — Section 13(2), 16, 16(2), 2(n), 30(2)

Citation : (2013) ILR (MP) 2360 : (2013) 4 MPHT 165 : (2013) 3 MPLJ 237

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : A.K. Mishra and Mr. Pratyush Tripathi, for the Appellant; R.D. Jain, Advocate General and Mr. S.M. Lal, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Alok Aradhe, J.—In this petition, the petitioner inter alia seeks quashment of the impugned condition of adjustment of pension of the petitioner against salary payable to him for the post of Chairman, M.P. State Consumer Disputes Redressal Commission (in short "the Commission") incorporated in the order dated 27-9-2003. The petitioner also seeks a direction to the respondent No. 1 to make payment of entire amount deducted from the salary of the petitioner along with interest at the rate of 12% per annum. The facts, essential to be stated for adjudication of the controversy involved in the writ petition are that the petitioner is a retired Judge of High Court of M.P. By an order dated 13-8-2003 the petitioner after consultation with the Chief Justice of the High Court of Madhya Pradesh was appointed as Chairman of the Commission. Thereafter, vide order dated 27-9-2003, the terms and conditions of appointment of the petitioner were notified and it was provided that the petitioner shall draw the salary payable to a Judge of the High Court minus pension payable to him on retirement as Judge of High Court of Madhya Pradesh. The petitioner joined as Chairman of the Commission on 30-9-2003. Being aggrieved by the aforesaid condition, the petitioner submitted representations on 5-9-2008 and 14-1-2009.

However, the representations submitted by the petitioner failed to evoke any response. In the aforesaid factual backdrop, the petitioner has approached this Court.

2. Learned Senior Counsel for the petitioner submitted that Section 16(2) of the Consumer Protection Act, 1986 (for short "the Act") provides that 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. While inviting the attention of this Court to Section 2(n) of the Act, it is submitted that word "prescribed" means prescribed by rules made by the State Government. It is pointed out that in exercise of power u/s 30(2) of the Act, the State Government has framed the rules, namely, Madhya Pradesh Consumer Protection Rules, 1987 (in short "the 1987 Rules") and Rule 6(1) of the 1987 Rules provides that President of the State Commission shall receive the salary of the Judge of the High Court if appointed on whole-time basis. It is urged that the impugned condition is contrary to Rule 6(1) of the Rules and by an executive order, no such condition can be prescribed which is contrary to the Statutory Rules.

3. It is also submitted that whenever legislature intended to provide for deduction of the amount of pension from the salary, specific provision has been made. In this connection, reference has been made to the provisions of M.P. Lokayukta Avam Up-Lokayukta Adhiniyam, 1981 as well as Rule 3 of the M.P. Human Rights Commission Chairman and Members (Salaries, Allowances and Other Conditions of Service) Rules, 1995. However, no such condition is prescribed in the 1987 Rules and on the other hand an express provision has been made under Rule 6(1) of the 1987 Rules, which provides that President of the State Commission shall receive the salary of the Judge of the High Court. It is also contended that the controversy involved in the instant case has been put to rest by the Division Bench decision of Orissa High Court in the case of Justice Debendra Mohan Patnaik Vs. State of Orissa and Others, . Learned Senior Counsel has also invited the attention of this Court to the order dated 3-12-2009 passed by Government of Chhattisgarh by which it is provided that the Chairman of Chhattisgarh State Consumer Disputes Redressal Commission shall draw the salary as is admissible to a Judge of the High Court. Lastly, it is submitted that there is no delay in filing the writ petition and even assuming that there is delay on the part of the petitioner, the delay is not such which would disentitle the petitioner to seek enforcement of his right in law and there cannot be any estoppel against law.

4. On the other hand, learned Advocate General submitted that the petitioner with his eyes wide open accepted the order of appointment which contains the impugned condition and for the first time he submitted the representation with regard to his grievance towards the fag end of his tenure and, therefore, he cannot be permitted to mount a challenge to the impugned condition at this point of time. It is further submitted that pension and salary of the petitioner is drawn

from the consolidated fund and therefore, the pension has to be deducted from the salary which is payable to the petitioner. In support of his submissions, learned Advocate General has placed reliance on the decisions in V.S. Mallimath Vs. Union of India and Another, and M.S. Chawla and Others Vs. State of Punjab and Another,

5. I have considered the respective submissions made by learned Counsel for the parties. Before proceeding further it would be appropriate to notice relevant statutory provisions. Section 16 of the 1986 Act deals with the composition of State Commission. Section 16(2) of the Act reads as under:--

16. Composition of the State Commission.--

(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:

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

6. Section 2(n) defines the expression "prescribed" as under:--

2. Definitions.--

(n) "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act.

7. Section 13(2) of the Act empowers the State Government to frame the Rules under which the State Government has framed the rules, namely, Madhya Pradesh Consumer Protection Rules, 1987. Rule 6 of the aforesaid Rules deals with the salary and other allowances and terms and conditions of the President and Members of the State Commission. The relevant extract of Rule 6 of the 1987 Rules reads as under:--

6. Salary and other allowances and terms and conditions of the President and Members of the State Commission.--

(1) President of the State Commission shall receive the salary of the Judge of the High Court, if appointed on whole-time basis. Other Members and the President, if appointed on part time basis, shall receive a consolidated honorarium of Rs. 500/- and conveyance allowance of Rs. 100/- per day for the sitting.

(2) The President and the Members of the State Commission shall be eligible for such travelling allowances and daily allowances on official tour as are admissible to Grade 1 officer of the State Government.

(3) The salary, honorarium, other allowances shall be defrayed out of the consolidated fund of the State Government.

8. Thus, from perusal of Rule 6 of the Rules, it is apparent that the same contains a position mandate that the President of the State Commission shall receive the salary of a Judge of the High Court if he has been appointed on whole time basis. It is well-settled in law that pension is not a bounty. The Supreme Court while considering Article 221(2) of the Constitution of India in the case of Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, , has held that right to pension earned by a High Court Judge cannot be abridged in any manner particularly in view of Article 221(2) of the Constitution of India. Neither the Consumer Protection Act, 1986 nor the Rules framed by the State Government thereunder contains such provision which provides for adjustment of the amount of pension against the salary payable to the Chairman of the State Commission. On the other hand, Rule 6(1) contains a positive statutory mandate that the President of the State Commission shall receive the salary of a Judge of the High Court, if appointed on whole-time basis. It is well-settled in law that if an administrative order is issued in contravention of statutory provision, the same has no sanctity in law. [See: B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, It is also well-settled in law that in considering the question of delay, the test is not of physical running of time. [See: M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, The delay may not defeat the claim for relief unless the position of the other side is so altered which cannot be retracted on account of lapse of time or inaction on the other party. However, the question of delay has to be examined in the facts of each case. [See: Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, and M.P. Ram Mohan Raja Vs. State of Tamil Nadu and Others,

9. In the instant case, the delay is not such which is fatal to the claim of the petitioner. The decision relied upon by learned Advocate General, i.e., M.S. Chawla (supra), has no application to the facts of the case as the same pertains to appointment of President of District Consumer Forum wherein it has been held that such appointment is re-employment of pensioner. Similarly, in the case of V.S. Mallimath (supra), Rule 3 of the National Human Rights Commission Chairperson and Members (Salaries, Allowances and Other Conditions of Service) Rules, 1993, provided that pension has to be deducted from the salary, whereas in the case in hand there is no such provision. Therefore, the aforesaid decision is of no assistance to the respondents. In view of the preceding analysis, the impugned condition contained in the order dated 27-9-2003 is contrary to Rule 6(1) of the Rules and, therefore, the same cannot be sustained in the eye of law. Accordingly, the same is hereby quashed. The respondents are directed to refund the amount deducted from the salary of the petitioner to him within a period of three months. In the result, the writ petition is allowed.