(2001) 01 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14804 of 1999

O. Chinnappa Reddy APPELLANT

Vs

Govt. of India and others RESPONDENT

Date of Decision : 24-01-2001

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54
Constitution of India, 1950 — Article 14, 300
Supreme Court Judges (Salaries and Conditions of Services) Act, 1958 — Section 16

Citation : (2001) 2 ALD 38 : (2001) 1 ALT 733

Hon'ble Judges : S.B. Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. C. Praveen Kumar, for the Appellant; Mr. L. Narasimha Reddy SC for Central Govt., for the Respondent

Judgement

S.B. Sinha, CJ.

1. A short but an interesting question of law arises for consideration in this writ petition. The petitioner herein is a former Judge of the Supreme Court of India. He was elevated as a Judge of this Court in August 1967 and was elevated to the Supreme Court of India in July 1978 after having functioned as a Judge and Acting Chief Justice of the Punjab and Haryana High Court for a brief period. The petitioner retired as a Judge of the Supreme Court on 24-9-1987.

2. Upon superannuation, his pension was fixed at Rs.54,000/- (rupees fifty four thousand only) per annum and family pension @ 25% thereof i.e., Rs.13,500/- (rupees thirteen thousand five hundred only) per annum. Calculation of the quantum of pension was made in terms of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, (hereinafter referred to for the sake of brevity as ''the Act''). Admittedly, the aforementioned Act was amended by Act I of 1999 with effect from 1-1-1996. Pursuant thereto and in furtherance thereof the petitioner became entitled to a pension of a sum of Rs.1,80,000/- (rupees one lakh and eighty thousand only) per annum. Section

16-A (b) of the Act was also amended by Act No.VII of 1999 in terms whereof, in place of 25%, the family pension became payable @ 30% of the annual pension payable to a pensioner. By reason of the aforementioned amendment the family pension payable to the petitioner came to be equated with Rs.3,403/- (rupees three thousand four hundred and three only) per month.

3. The contention of the petitioner is that a Cabinet Secretary, who might be receiving a sum of Rs.30,000/- (rupees thirty thousand only) by way of a salary at the fag end of his career, would be entitled to family pension @ 30% of his pay last drawn.

4. The question, which arises for consideration, in this writ petition is as to whether such a disparity stands the test of Article 14 of the Constitution of India.

5. Before adverting to the question of law raised in this writ petition, the relevant provisions of the Act may be noticed. Section 16-A of the Act reads thus:

"16-A (1).....

(a) dies before retirement, family pension calculated at the rate of fifty 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 up to 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; and

(b) dies after retirement on attaining the age of sixty-five years, family pension shall be twenty-five per cent of the pension, admissible and shall be payable to the persons entitled thereto.

(c) dies after retirement after seeking premature retirement and before attaining the age of sixty-five years, family pension shall be calculated at the rates specified in clause (a) and shall be payable to the person or persons entitled thereto".

6. From the aforementioned provision it would appear that the rate of family pension was 50% of the pension for seven (7) years, whereafter the same would be reduced to 25% subject to a minimum of Rs.375/- per month. As against the same, in the case of the Central Government employees, including the Cabinet Secretary, calculating on the basis of their salary as on 1-11-1986 in terms of Rule 54 of the Central Civil Service (Pension) Rules, 1972 (hereinafter referred to for the sake of brevity as ''the Rules''), family pension would be payable in the following terms:

Pay of the Government servant Rate cf monthly family pension inclusive of deamess relief up to average CPI level 608

(i) Not exceeding Rs.1,500 p.m. 30% of basic pay subject of minimum of Rs.375/-

(ii) Exceeding Rs.1,500/-but not exceeding Rs.3,000/- 20% of basic pay subject to a minimum of Rs.450/-

(iii) Exceeding Rs.3,000/- 15% of basic pay subject to a minimum of Rs.600/- and a maximum of Rs.1,250/-

7. By reason of the amended provisions of the Act the revised family pension would be 30% of the pension, in the case of a former Supreme Court Judge, whereas in the case of Cabinet Secretary, the same would be 30% of his pay. In other words, whereas a Supreme Court Judge after serving the Apex Court for a number of years and drawing the fixed salary @ Rs.30,000/- per month, his widow would be getting about Rs.4,500/- per month; the widow of a Cabinet Secretary, who may at the fag end of his career may get the salary of Rs.30,000/- per month, would be entitled to Rs.9,000/- per month.

8. The Central Government with a view to bringing parity in the conditions of service of all the employees, appointed Fifth Central Pay Commission (hereinafter referred to as ''the Commission'' for the sake of brevity). The recommendations of the Commission inter alia as regards family pension were accepted. The Commission recommended:

"The existing varying rates of family pension for different categories of employees (30%, 20% and 15%) may be replaced by a uniform rate of 30% of pay for all categories of employees".

9. The Central Government by a Circular letter dated 2-4-1998 inter alia directed:

"...........

2. Revision of pension of Part-II Judges i.e., those who were elevated from earlier Indian Civil Service to High/Supreme Court:

The pension of such Judges comprises of two parts i.e., pension under para 2 (a) and 2(b) of part-II of the first schedule to the Act of 1954/1958. The pension under para 2(a) was as per the ordinary rules of the Indian Civil Service. As the pension of former Members of Indian Civil Service has now been revised as per the department of Pension and PWs OM dated the 27-10-1997, the pension under para 2(a) of such Judges of High/ Supreme Court, elevated from Indian Civil Service may accordingly be revised in terms of the Department of Pension and PWs OM dated the 27-10-1997.

3.1 Revision of Pension of Part-III Judges, i.e., those who are elevated to High/ Supreme Court from earlier pensionable posts under the Union or State:

The pension of part-III Judges also comprises of two parts i.e., pension under part 2 (a) and 2 (b) of Part-III of the first schedule/schedule to the Acts of 1954/ 1958. The pension under para 2(a) is sanctioned under the ordinary rules/ orders/notifications applicable to the service, to which the concerned Judge belonged prior to his elevation to High/ Supreme Court.

3.2 The Supreme Court of India had directed in CMA No.18044 of 1988, in the matter of Justice M.L. Jain V. UOI., the State Governments to adopt revised pension allowed to the Central Government Pensioners by the Department of Pension and PW, w.e.f. 1-1-1986 in respect of its employees including Members of State Higher Judicial Service, so that these revised pensions may also be granted to the part-III Judges under para 2(a). The said Judgment was circulated by this Department vide its Circular letter No.27/20/88-Jus; dated 26-6-1989. Accordingly, the ordinary pension admissible to High Court/Supreme Court Judges under para 2(a) of Part-III of the first schedule/schedule to the High/ Supreme Court Judges (C/S) Act, 1954/1958, respectively, may be revised with effect from 1-1-1996, as in the case of the employees of the Central Government or from the date, respective State Government decide to adopt these orders or an independent order issued by them, if any, to grant the benefit of increased pension on similar lines to their employees including Members of State Higher Judicial Service ...."

10. On the backdrop of the aforementioned factual matrix, the question which would fall for consideration is as to whether the provision for grant of family pension to the widow of a Cabinet Secretary calculated @ 30% of his pay would be discriminatory vis-a-vis the family pension payable (o the widow of a Supreme Court Judge calculated on the basis of the pension payable to him.

11. There cannot be any doubt that in terms of Article 14 of the Constitution of India a reasonable classification based on intelligible differentia would be permissible. But, in a given situation like the present one, where a question arises as to whether classification so made is reasonable or not, the factual backdrop therefore may well require serious consideration.

12. It is not in dispute that the emoluments of a Judge were at all times had been much higher than a Cabinet Secretary. Only recently i.e., in the year 1996 a Cabinet Secretary, at the fag end of his career, would be entitled to a salary of Rs.30,000/-, which amount was payable to a Supreme Court Judge in terms of the provisions of the Act.

13. Apart from the fact that a Supreme Court Judge had all along been occupying a higher status than the Cabinet Secretary, it is no gain saying that whereas a Judge of the Supreme Court discharges constitutional function, a Cabinet Secretary does not. Even in relation to the functions of a Judicial Officer the question is no longer res integra, having regard to the decisions of the Apex Court in All India Judges'' Association Vs. Union of India and others, (hereinafter referred to as ''the 1st case'') and All India Judges'' Association and Others Vs. Union of India and Others, (hereinafter referred to as ''the 2nd case''). In the 1st case, the Apex Court, in view of the necessity of having an independent judiciary, noticed:

"44. As early as 1958 the Law Commission said:

"As we shall point out later the problem has since grown in dimension because there is unmistakable testimony that the standards of the judicial officers recruited from the Bar and other sources have during recent years fallen in a substantial degree for various reasons. This has been almost the unique view expressed by the witnesses before us. It is thus obvious that no scheme of review of judicial administration will be effective or worthwhile unless the basic problem of providing a trained and capable judicial personnel is satisfactorily solved".

45. This was adequate and timely notice to the Government and its people. Instead of attending to the problem then, 33 long years have been allowed to roll by and what was then said as a growing dimension has grown to devalue the system. Its resurrection has, therefore, become more costly.

46. It is perhaps useful to recall here the prophetic warning sounded by Robert Ingersoll:

"A Government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities, and all the nations that have passed away- all are a warning that no nation founded upon injustice can stand. From the sand enshrouded Egypt, from the marble wilderness of Athens, and from every fallen or crumbling stone of the once mighty Rome, comes a wall as it were, the cry that no nation founded on injustice can permanently stand".

47. Society, therefore, must understand the problem. Solution to the problem would depend upon realisation of the fact that the more capable people at the Bar are not willing to accept offers of judicial appointments. The plea that the other wings in the States would demand improvement in their scales of pay is not a relevant feature at all when the problem is viewed from this angle. We hope and trust that society would generate the appropriate understanding of the matter and no Government would come forward to take the stand that if the pay scales and perks of the judicial Officers are improved similar demands would come from other wings of Government".

14. It quoted the statement of Edmund Burke with approval, which reads:

"All persons possessing a portion of power ought to be strongly and lawfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master, Author and Founder of Society".

15. In the 2nd case, while considering a submission made on behalf of the Union of India to the effect that the Court cannot issue any direction as regards enhancement of the age of superannuation, having regard to the provisions contained in Article 309 of the Constitution of India the Apex Court negatived the submission saying:

"6. ... But the mere fact that Article 309 gives power to the executive and the legislature to prescribe the service conditions of the judiciary does not mean that the judiciary does not have no say in the matter. It would be against the spirit of the Constitution to deny any rule to the judiciary in that behalf, for theoretically it would not be impossible for the executive or the legislature to turn and twist the tail of the judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the judiciary".

16. The Apex Court, prior thereto, in paragraph 5 of the judgment, observed:

"5. .... As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive but between the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged. The failure to grasp this simple truth is responsible for the contention that the service conditions of the judiciary must be comparable to those of the administrative executive and any amelioration in the service conditions of the former must necessarily lead to the comparable improvement in the service conditions of the latter".

17. Having regard to the tests laid down by the Apex Court in the aforementioned two decisions, the submission of Mr. Narsimha Reddy that the Supreme Court Judges and Cabinet Secretary form two different classes and as such a statute providing for different quantum of pension and family pension would not attract the wrath of Article 14 of the Constitution of India cannot be accepted. If the said contention is accepted, the same would amount to a reverse discrimination.

18. Pension, as is well known, is not a bounty. A person is entitled to a pension, and consequent upon his death his widow is entitled to a family pension as a matter of right, which is a right of property within the meaning of Article 300A of the Constitution of India. Having regard to the services rendered by him, while calculating the amount of pension and/or family pension the nature of services and/or the mode and mariner of calculation thereof must therefore be calculated having regard to the pension and family pension payable to a person either drawing less emoluments or discharging less important functions. Further more, we do not find any justification whatsoever as to why despite accepting the Report of the Fifth Central Pay Commission, as also despite issue of the above Circular letter dated 2-4-1998, a different standard of family pension to the Supreme Court Judges vis-a-vis the Cabinet Secretary had been laid down.

19. What therefore would attract the wrath of Article 14 of the Constitution of India is not only different nature of duties and functions of a Supreme Court Judges vis-a-vis the Cabinet Secretary, but also the mode and manner of calculation of pension/ family pension having regard to the recommendations of the Fifth Central Pay Commission.

20. Having regard to our findings aforementioned, we are of the opinion that Section 16-A (b) of the Act is required to be read down upon applying the

principles of purposive construction as otherwise the same would give rise to an absurdity, which is not countenanced by the legislative and other factors governing the field.

21. In a situation of this nature, this Court, in any event, cannot countenance that whereas the amount of pension payable to a Supreme Court Judge vis-a-vis a Cabinet Secretary would be the same; there would be a disparity in the matter of calculation of family pension.

22. We, therefore, having regard to the recommendations of the Fifth Central Pay Commission, are of the opinion that no discrimination can be made in the matter of payment of family pension to a Supreme Court Judge vis-a-vis a Cabinet Secretary. We, therefore, allow this writ petition directing the Central Government to calculate the family pension payable to the petitioner on the basis of the last pay drawn by him and not in terms of the pension payable to him.

23. With the aforementioned observations and directions, the writ petition is allowed. No order as to costs.