
(2014) 03 SC CK 0100

In the Supreme Court Of India

Case No : Writ Petition (Civil) No's. 521, 523, 524 of 2002, 37, 38 of 2003 and 465 of 2005 and Civil Appeal No's. 4248-4249 of 2014 (Arising out of S.L.P. (C) No's. 9558-9559 of 2010)

P. Ramakrishnam Raju

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Constitution of India, 1950 — Article 112(3), 124, 124(3), 125, 126
Delhi Higher Judicial Services Rules, 1970 — Rule 26B
High Court and Supreme Court Judges (Salaries and Conditions of Service) (Amendment) Act, 2005 — Section 13A
High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 14
Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005 — Section 13A
Supreme Court Judges (Salaries and Conditions of Services) Act, 1958 — Section 13, 13A
Supreme Court Judges Rules, 1959 — Rule 3B

Citation : (2014) 3 ABR 577 : (2014) 4 AD (SC) 531 : AIR 2014 SC 1619 : (2014) 4 ALD 113 : (2014) 3 ALT 25 : (2014) 3 AWC 2738 : (2014) 2 ESC 226 : (2014) 142 FLR 218 : (2014) 2 GLD 312 : (2014) 2 GLT 72 : (2014) 5 JT 102 : (2014) 6 KarLJ 367 : (2014) 2 KLT 282 : (2

Hon'ble Judges : P. Sathasivam, C.J.;Ranjan Gogoi, J;N.V. Ramana, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

P. Sathasivam, C.J.I.

1. The main question which arises for consideration is whether High Court Judges, who are appointed from the Bar Under Article 217(2)(b) of the Constitution of India, on retirement, are entitled for an addition of 10 years to their service for the purposes of their pension?

2. The above petitions have been filed by former Judges of the various High Courts of the country as well as by the Association of the Retired Judges of the

Supreme Court and the High Courts elevated from the Bar.

3. The Petitioners have prayed that the number of years practiced as an advocate shall be taken into account and shall be added to the service as a Judge of the High Court for the purpose of determining the maximum pension permissible under Part-I of the First Schedule to the High Court Judges (Salaries and Conditions of Service) Act, 1954 (in short 'the HCJ Act'). It was further stated that in respect of Part-III of the First Schedule, which deals with the Judges elevated from the State Judicial Service, almost all the Judges get full pension even if they have worked as a Judge of the High Court for 2 or 3 years and their entire service is added to their service as a Judge of the High Court for computing pension under this Part. For this reason, the members of the subordinate judiciary get more pension than the Judges elevated from the Bar on retirement.

4. In view of the above, the Petitioners prayed that though Part-I and Part-III Judges hold equivalent posts, they are not similarly situated in regard to pension and retirement benefits which is breach of Articles 14 and 21 of the Constitution of India and one rank one pension must be the norm in respect of a constitutional office. It is further prayed that the retired Judges of the High Courts should also be given enhanced allowance for domestic help/peon/driver, telephone expenses and other secretarial assistance.

5. We have heard the arguments advanced by learned Counsel for the parties and perused the records.

6. The Constitution of India provides for three-tier judicial system. The Union Judiciary-Establishment and Constitution of Supreme Court of India (Articles 124 to 147); The High Courts in the States (Articles 214 to 231) and Subordinate Courts (Article 233 to 237). The Constitution of India also provides for appointment of Judges from amongst the members of the Bar at all the three levels.

7. The appointment of the Judges of the Supreme Court is governed by Article 124(3)(a), (b) and (c) of the Constitution. It envisages appointment from three sources: (i) from amongst the Judges of the High Court having service of at least five years; (ii) the members of the Bar having a standing of not less than 10 years; and (iii) any person, who is, in the opinion of the President, is a distinguished jurist.

8. The appointment of a Judge of the High Court is governed by Article 217(2)(a) and (b) of the Constitution which envisages appointments from two different sources: (a) from amongst the Judicial officers who have held the office for at least 10 years; and (b) the members of the Bar, who have been Advocates of a High Court for at least 10 years.

9. The appointment of District Judges is governed by Article 233(2) of the Constitution which provides that a person not already in the service of the Union

or of the State shall only be eligible to be appointed as a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

10. The Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, (in short 'the SCJ Act'), the HCJ Act and the Rules made thereunder, regulate their salary and conditions of service. The provisions under both the Acts were similar prior to the Amendment Act, 2005. The service conditions of the Judges of the subordinate courts are governed by the Service Rules made Under Article 309 of the Constitution of India.

11. Section 13 of the SCJ Act read with Clause 2 of Part-I of the Schedule deals with the pension payable to the retired Judges of the Supreme Court. Similarly, Section 14 of the HCJ Act read with Clause 2 of Part-I of the First Schedule deals with the pension payable to the retired Judges of the High Courts. The provisions under both the Acts were similar prior to the Amendment Act, 2005. Relevant portion of Section 14 of the HCJ Act reads as follows:

14. Pension payable to Judges.- Subject to the provisions of this Act, every Judge shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part 1 of the First Schedule:

Provided that no such pension shall be payable to a Judge unless-

- a) he has completed not less than twelve years of service for pension; or
- b) he has attained the age of sixty-two years; or
- c) his retirement is medically certified to be necessitated by ill-health;

12. Clause 2 of Part-I to the First Schedule of the said Act deals with the pension for the retired Judges of the High Court, who are directly appointed from the Bar, which reads as under:

2. Subject to the other provisions of this part, the pension payable to a Judge, to whom this part apply and who has completed not less than 7 years of service for pension shall be

- (a) for service as Chief Justice in any High Court, Rs. 43,890/- per annum for each completed year of service;
- (b) for service as any other Judge in any High Court Rs. 34,350/- per annum for each completed year of service.

Provided that the pension under this paragraph shall in no case exceed Rs. 5,40,000/- per annum in the case of Chief Justice and Rs. 4,80,000/- per annum in case of any other Judges.

13. The above-noted Clause (2) of Part I of the First Schedule implies that no pension is payable to the Judges having less than 7 years of service as a Judge. The above Section further shows that for a Judge of the High Court to receive full

pension benefits, he should have completed 12 years of service as a Judge of the High Court. It is submitted that when members of the Bar are offered the post of High Court Judges, they are generally at the age of about 50 years or above and at the prime of their practice, which they have to give up to serve the system. Therefore, many of them are reluctant to accept the offer as the post-retirement benefits are not attractive enough.

14. Section 13 and Clause 2 of the Schedule to the SCJ Act earlier contained similar prohibition with regard to the eligibility of pension to the Judges appointed from the Bar as contained in the HCJ Act. Both the Acts provide that no pension shall be payable to a Judge who has less than 7 years of service.

15. In *Kuldip Singh Vs. Union of India (UOI)*, the Petitioner therein, who was appointed as a Judge of the Supreme Court from the Bar, on his retirement was denied the benefit of pension as he did not fulfill the requisite conditions. Consequently, he filed a Writ Petition before this Court praying, inter alia, (a) to take into account 10 years of practice at the Bar in addition to his service for the purposes of pension. (b) In the alternative, prayed for a direction to treat the appointees Under Article 124(3)(b) for the purposes of pension at par with the appointees Under Article 124(3)(a). On 24.09.2002, while issuing notice, this Court passed the following order:

1. In this writ petition, the question which arises for consideration relates to pension which is payable to a Judge who retires from this Court after having been appointed directly from the Bar. Similar question also arises with regard to Bar appointees to the High Courts.

2. Experience has shown that the Bar appointees especially, if they are appointed at the age of 50 years and above, get lesser pension than the Service Judge appointees. It is to be seen that as far as the Constitution of India is concerned, it stipulates the manner of appointment of the Judges and provides what may be termed as the qualification required for their appointment. The Constitution contemplates appointment to the High Courts from amongst members of the Bar as well as from amongst the judicial officers. The Constitution does not provide for any specific quota. Till a few years ago in practice 66 2/3% of vacancies were filled from amongst members of the Bar and 33 1/3% from the judicial services. It is only in the Conference of 4-12-1993 of the Chief Ministers and the Chief Justices that it was decided that the number of vacancies from amongst the judicial officers "might go up to 40%". The decision of 4-12-1993, cannot mean that the number of Judges from the services has to be 40%. The normal practice which has been followed was 2/3rds and 1/3rd from amongst members of the Bar and judicial services respectively and it is only on a rare occasion that the Chief Justice of a High Court can propose more Service Judges being appointed if suitable members of the Bar are not available. But this cannot be more than 40% in any case. It may here also be noted that in the Chief Justices' Conference held in 1999, it was unanimously resolved that the quota should normally be 66 2/3% and 33 1/3% and it is on this basis the Government should determine the

likely number of Bar Judges and then consider whether the High Court Judges who are appointed from amongst the members of the Bar should not be given the same weightage as is now sought to be given to the members of the Bar who are appointed to this Court as far as pension is concerned.

(Emphasis supplied)

16. The Government, vide Amendment Act, 2005 (46/2005), added Section 13A to the SCJ Act which reads as under:

Subject to the provision of this Act, a period of ten years shall be added to the service of a Judge for the purpose of his pension, who qualified for appointment as such Judge under Sub-clause (b) of Clause (3) of Article 124 of the Constitution.

Therefore, the condition of minimum 7 years of service as a Judge to become eligible for pension was omitted from the Section as well as from Clause 2 of its Schedule. In view of the amendment, the said writ petition was dismissed as withdrawn on 06.12.2005. However, Petitioner's writ petition and other connected matters remained pending.

17. In Govt. of NCT of Delhi and Others Vs. All India Young Lawyers Association (Regd.) and Another, a Lawyers' Association filed a writ petition in the High Court of Delhi praying therein that the benefit of 15 years addition of service be given to the Judge, who is directly appointed from the Bar to the Higher Judicial Service for the purposes of pension. The writ petition was allowed and Rule 26B was ordered to be added to the Delhi Higher Judicial Service Rules, 1970. The Govt. of NCT, Delhi challenged the said judgment and order and this Court upheld the validity of Rule 26B, however, the period to be added to the service for the purposes of pension, was reduced to 10 years or actual practice at the Bar whichever is less.

18. In the three-tier judicial system provided by the Constitution, members of the Bar, who join the Higher Judicial Service at the District Judges level, on retirement, get the benefit of 10 years addition to their service for the purposes of pension (Rule 26B of the DHJS Rules). Judges of the Supreme Court, who are appointed from the Bar given a period of 10 years to their service for the purposes of pension (Section 13A of the Amendment Act, 2005). However, the benefit of 10 years addition to their service for the purposes of pension is being denied to the Judges of the High court appointed from the Bar, which is arbitrary and violative of Article 14 of the Constitution of India.

19. The Explanation (aa) appended to Article 217(2) of the Constitution of India envisages that, "in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate." The explanation thus treats the experience of an Advocate at the

Bar and the period of judicial office held by him at par.

20. The Judges, who are appointed Under Article 217(2)(a) being members of the Judicial Service, even if they serve as a Judge of the High Court for only one or two years, get full pension benefits because of the applicability of Rule 26B or because of their earlier entry into judicial service. However, the Judges of the High Court, who are appointed from the Bar do not get similar benefit of full pension, which is arbitrary and discriminatory.

21. Section 14 of the HCJ Act and Clause 2 of Part I of the First Schedule which governs the pension payable to Judges gives rise to unequal consequences. The existing scheme treats unequally the equals, which is violative of Articles 14 and 21 of the Constitution of India.

22. To remove the above discrimination, in the Chief Justices Conference held on April 5 and 6, 2013, it was, inter alia, resolved that, "for pensionary benefits, ten years' practice as an advocate be added as a qualifying service, for Judges elevated from the Bar." (Resolution No. 18 (viii)). It fully supports the Petitioner's submission.

23. The ratio of the decision cited by the Respondent in *Union of India v. Devki Nandan Agarwal* AIR 1992 SC 196 is not applicable because the reliefs prayed therein were entirely different and also because it is per incuriam in view of the subsequent decisions of this Court of equal strength in *All India Judges' Association Vs. Union of India and others*, and *All India Judges' Association and Others Vs. Union of India and Others*, wherein the requirement of independence of the judiciary have been underlined as also two decisions cited above i.e. *Kuldip Singh* (supra) and *All India Young Lawyers' Association* (supra).

24. When persons who occupied the Constitutional Office of Judge, High Court retire, there should not be any discrimination with regard to the fixation of their pension. Irrespective of the source from where the Judges are drawn, they must be paid the same pension just as they have been paid same salaries and allowances and perks as serving Judges. Only practicing Advocates who have attained eminence are invited to accept Judgeship of the High Court. Because of the status of the office of High Court Judge, the responsibilities and duties attached to the office, hardly any advocate of distinction declines the offer. Though it may be a great financial sacrifice to a successful lawyer to accept Judgeship, it is the desire to serve the society and the high prestige attached to the office and the respect the office commands that propel a successful lawyer to accept Judgeship. The experience and knowledge gained by a successful lawyer at the Bar can never be considered to be less important from any point of view vis-à-vis the experience gained by a judicial officer. If the service of a judicial officer is counted for fixation of pension, there is no valid reason as to why the experience at Bar cannot be treated as equivalent for the same purpose.

25. The fixation of higher pension to the Judges drawn from the Subordinate Judiciary who have served for shorter period in contradistinction to Judges drawn

from the Bar who have served for longer period with less pension is highly discriminatory and breach of Article 14 of the Constitution. The classification itself is unreasonable without any legally acceptable nexus with the object sought to be achieved.

26. The meager pension for Judges drawn from the Bar and served for less than 12 years on the Bench adversely affects the image of the Judiciary. When pensions are meager because of the shorter service, lawyers who attain distinction in the profession may not, because of this anomaly, accept the office of Judgeship. When capable lawyers do not show inclination towards Judgeship, the quality of justice declines.

27. In most of the States, the Judgeship of the High Court is offered to advocates who are in the age group of 50-55 years, since pre-eminence at the Bar is achieved normally at that age. After remaining at the top for a few years, a successful lawyer may show inclination to accept Judgeship, since that is the culmination of the desire and objective of most of the lawyers. When persons holding constitutional office retire from service, making discrimination in the fixation of their pensions depending upon the source from which they were appointed is in breach of Articles 14 and 16(1) of the Constitution. One rank one pension must be the norm in respect of a Constitutional Office.

28. When a Civil Servant retires from service, the family pension is fixed at a higher rate whereas in the case of Judges of the High Court, it is fixed at a lower rate. No discrimination can be made in the matter of payment of family pension. The expenditure for pension to the High Court Judges is charged on the Consolidated Fund of India Under Article 112(3)(d)(iii) of the Constitution.

29. In the light of what is discussed, we accept the Petitioners' claim and declare that for pensionary benefits, ten years' practice as an advocate be added as a qualifying service for Judges elevated from the Bar. Further, in order to remove arbitrariness in the matter of pension of the Judges of the High Courts elevated from the Bar, the reliefs, as mentioned above are to be reckoned from 01.04.2004, the date on which Section 13A was inserted by the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005 (46 of 2005). Requisite amendment be carried out in the High Court Judges Rules, 1956 with regard to post-retiral benefits as has been done in relation to the retired Judges of the Supreme Court in terms of amendment carried out by Rule 3B of the Supreme Court Judges Rules, 1959.

Civil Appeal Nos. 4248-4249 of 2014 (Arising out of SLP (C) Nos. 9558-9559 of 2010)

30. Leave granted.

31. At the instance of the Association of retired Judges of the Supreme Court and High Courts, the Division Bench of the High Court of Rajasthan at Jaipur directed the State Government to pay a sum of Rs. 9,000/- per month to a retired Chief

Justice of the High Court to meet expenses of domestic help/peon/driver/ telephone expenses and secretarial assistance etc. and Rs. 7,500/- per month to a retired Judge of the High Court for the same purposes. The said order shall be effective from 01.02.2010. Questioning the same, the State of Rajasthan has filed the above appeal.

32. With reference to the above claim and the order of the High Court, in the Conference of Chief Ministers and Chief Justices of the High Courts held on 18.09.2004, the following Resolution was passed:

18. Augmenting of post-retiral benefits of Judges.

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[vi] As regards post-retiral benefits to the retired Judges of the High Courts, the scheme sanctioned by the State of Andhra Pradesh be adopted and followed in all the States, except where better benefits are already available.

33. It is brought to our notice that in pursuance of the said Resolution, most of the States in the country have extended various post-retiral benefits to the retired Chief Justices and retired Judges of the respective High Courts. By G.O. Ms. No. 28 dated 16.03.2012 issued by Law Department, Government of Andhra Pradesh sanctioned an amount of Rs. 14,000/- per month to the retired Chief Justices of the High Court of Andhra Pradesh and an amount of Rs. 12,000/- per month to the retired Judges of the High Court of Andhra Pradesh for defraying the services of an orderly, driver, security guard etc. and for meeting expenses incurred towards secretarial assistance on contract basis and a residential telephone free of cost with number of free calls to the extent of 1500 per month over and above the number of free calls per month allowed by the telephone authorities to both the retired Chief Justices and Judges of the High Court of Andhra Pradesh w.e.f. 01.04.2012.

34. While appreciating the steps taken by the Government of Andhra Pradesh and other States who have already formulated such scheme, by this order, we hope and trust that the States who have not so far framed such scheme will formulate the same, depending on the local conditions, for the benefit of the retired Chief Justices and retired Judges of the respective High Courts as early as possible preferably within a period of six months from the date of receipt of copy of this order.

35. All the Writ Petitions and the appeals are disposed of on the above terms. In view of the disposal of the writ petitions, no orders are required in the intervention application.