

(2003) 04 RAJ CK 0057

In the Rajasthan High Court

Case No : (DB) Civil Special Appeal (Writ) No. 796 of 1997

State of Rajasthan and Others

APPELLANT

Vs

Shyam Sunder Gupta and Others

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Consumer Protection Act, 1986 — Section 10
Consumer Protection Rules, 1987 — Rule 3

Citation : (2003) 4 RLW 2081 : (2003) 3 WLC 690

Hon'ble Judges : Y.R. Meena, J;Rajesh Balia, J;K.S. Rathore, J

Bench : Full Bench

Advocate : Jagdeep Dhankar, Praveen Balwada, Shailendra Balwada, Punit Chowdhary, Mahesh Gupta, Munindra Singh, Rajendra Prasad, M.C. Tailor and Prahlad Singh, O.P. Sharma, R.N. Mathur, A.A.G, for the Appellant;

Judgement

Meena, J.—Since this appeal and two writ petitions are inter-connected, we heard and dispose of them by this common order.

2. This reference has been made to the Larger Bench by the Division Bench vide order dated 22.3.2001 in the case State of Raj. v. Shyam Sunder Gupta (1) and Surendra Singh v. State of Raj. and Ors. (2). In both cases similar issues have been raised. One more case has been tagged i.e. RHJS Officers Association and Ors. v. State of Rajasthan (3). Following questions are referred to this Larger Bench:-

1. Whether .President, consumer Forum gets salary of a District Judge?
2. If a person already in service is appointed as President, Consumer Forum, he will continue to get the same salary till he reaches the age of superannuation provided under the Rajasthan Higher Judicial Service Rules?
3. After date of retirement from the Higher Judicial Service's, if the person still continues as President of the Consumer forum to complete the tenure provided under the Act, whether he will continue to get the same salary last drawn by him

or usual salary of a District Judge plus the pension for which he was otherwise entitled for after his due retirement as member of Higher Judicial Services?

4. During the tenure as President of Consumer Forum whether a person can be treated as member of Higher Judicial Services even after he reaches the age of superannuation so as to entitle him to all the benefits of services for the remaining period of his tenure as President, Consumer Forum?

5. Whether there can be any re-employment of President, Consumer Forum during the fixed tenure, if the person appointed as President while in service, after his retirement from the services?

6. What is the status of a member of RHJS who is appointed as President. District Forum while in the RHJS and continuing as such after his superannuation in the RHJS?

7. whether aforesaid appointment of a member of RHJS at any stage can be reckoned as "re-employment" or whether it is to be held as "statutory appointment"?

3. The facts in case of Shyam Sunder Gupta are that Shyam Sunder Gupta was appointed as President of Consumer Disputes Redressal Forum, Sikar vide order dated 2.6.1994 by the Food and Civil Supply Department Government of Rajasthan under the provisions of Section 10(1) of the consumer Protection Act, 1986 (hereinafter called as, "The Act, 1986". The petitioner was relieved by the Rajasthan High Court vide its order dated 18.6.1994 to join his new place of posting as President of the District Consumer Forum, Sikar. In compliance of the said order, the petitioner joined on the said post on 18.6.1994. since then the petitioner had been working continuously on the said post till filing of the writ petition. The appointment as President of the District Consumer Forum was for a term of five years of upto the age of 65 years, whichever is earlier. The petitioner had completed his age of superannuation in RHJS i.e. 60 years, as a member of the Rajasthan Higher Judicial Services on 31.5.1995. The Government of Rajasthan sanctioned gross pension as Rs. 3,050/- and net pension as Rs. 2,034/- vide order dated 19.2.1996.

4. As the petitioner has retired on 31.5.1995 from RHJS and he became eligible to get pension of a retired judicial officer, the petitioner claimed that he should be allowed to get District Judges salary plus pension which he was getting on his superannuation from RHJS on 31.5.1995. In order dated 19.2.1996, the Government has ordered that Shyam Sunder Gupta will continue to act as President of the Consumer Forum but as he retired from the RHJS on 31.5.1995, therefore, thereafter he will get the salary as per Rule 337 of the Rajasthan Service Rules, 1951 and vide order dated 14.6.1996 (Annex.5) it is made clear that he will get the salary of District Judge which he was getting on the date of retirement minus the amount of pension and he will get the medical facilities only which is permissible to the retired persons. He will also not get the office maintenance allowance. Both the orders were challenged by Shri Shyam Sunder

Gupta claiming that once he was appointed as President of the District Forum while he was in RHJS, his facilities and perks and pay cannot be reduced or put him in disadvantageous position then he had a status and position while he was in Rajasthan higher Judicial Service till his retirement from the Consumer Forum.

5. The case of Shri Surendra Singh was that the petitioner was a member of the Rajasthan Higher Judicial Services in the year 1994 and posted as Judge, Family Court, Kota. At that time he was offered the post of President of District Consumer Disputes Redressal Forum. The Government vide order dated 2.6.1994 has appointed him as President of Consumer Forum. He joined on that post on 4.7.1994. The petitioner retired from RHJS on 30.6.1996 but continued to draw the salary and allowances which he was drawing before retirement in addition to the pension which he got on his superannuation from RHJS. On 23.8.1996, the respondent issued an order asking him to draw the salary in accordance with Rule 337 of the Rajasthan Service Rules, 1951.

6. The petitioner Claimed that when the petitioner had not been re-appointed on his retirement from RHJS, the provision of Rule 337 of Rajasthan Services Rules, 1951 had no application. The petitioner also claimed benefit of Revised Pay Scale Rules, 1998 on the basis that when the petitioner had not retired prior to 30.6.1996, he should get the benefit of Revised Pay Scale Rules, which are revised after his retirement from the RHJS but before he retired from District Consumer Forum. The prayer of Shri Singh had been rejected. He challenged that order and claimed that as his case is not of re-employment and he continued in District Consumer Forum on the date of revised rules made effective, he is entitled for Revised Pay Scale Rules, 1998.

7. The petitioner challenged the order dated 22.7.1998 (Annex.7) and order dated 22.7.1998 (Annex.8), whereby the earlier fixation order has been cancelled taking the view that after retirement from RHJS, the Petitioner cannot get the benefit of Revised Pay Scale Rules, 1998. The Petitioner claimed that even after retirement from RHJS, he be treated in Rajasthan Higher Judicial Service having the same benefit as available to the RHJS as he joined the Forum while he was in Rajasthan Higher Judicial Services.

8. The third writ petition has been filed by the RHJS Officers Association. In this writ petition, the petitioners are officers of Rajasthan Higher Judicial Service Association; Jagpal Singh, RHJS Officers claimed that if any Judicial Officer from Rajasthan Higher Judicial Service joined the Consumer Forum while in Rajasthan Higher Judicial Service and if he retired during the tenure of Consumer Forum, he should have the same benefit till his retirement from the Consumer Forum as are available to the members of Rajasthan Higher Judicial Service even though he retired from RHJS during the tenure of President of District Consumer Forum.

9. The petitioners Jagpal Singh and Usman AH Khan also have the same case. They were appointed as President of Consumer Forum while they were member of Rajasthan Higher Judicial Service for 5 years or 65 years, whichever is earlier.

Before completion of the tenure as President of the District Consumer Forum, they are superannuated from the Rajasthan Higher Judicial Services and got all the retiral benefits but claimed that till their retirement as President, District Consumer Forum, they are entitled for all the benefits which are available to the member of the Rajasthan Higher Judicial Services.

10. This reference has been made to the Larger Bench as there was a diversion of opinions of different benches of this Court and also the view of Kerala High Court supporting the view taken by the learned Single Judge of this Court.

11. The basic issue in these question is whether the officer of Rajasthan Higher Judicial Service if appointed as President of District Consumer Forum, while he was in Rajasthan Higher Judicial Service and, if he retires from RHJS, before completion of 5 years in the District Consumer Forum, should he be treated as member of Rajasthan Higher Judicial Service or whether he is entitled for all the benefits of member of RHJS till the retires from the District Consumer Forum.

12. Before we proceed, we would like to refer some relevant provisions of Rajasthan Consumer Protection Act, 1986 and the Rajasthan consumer Protection Rules, 1987. (hereinafter, referred as "the Rules, 1987").

13. Clause (a) of Sub-section 1 of Section 10 provides that each District Forum shall consist of a person who is, or who has been, or is qualified to be a District Judge, who shall be its President. Sub-section (2) of Section 10 of the Consumer Protection Act, 1986 (hereinafter, referred as "Act, 1986") provides that every member of the District Forum shall hold office for a term of five years or upto the age of 65 years, whichever is earlier and he shall not be eligible for re-employment. Sub-section (3) of Section 10 provides that the salary of honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

14. The power to make rules has been given u/s 30 of the Act, 1986. Rules are framed u/s 30 of the Act, 1986. Sub-rule (1) of Rule 3 of the Consumer Protection Rules, 1987 (hereinafter, referred as "Rules, 1987") pertains to salary and other allowances and terms and conditions of the President and Members of the District Forum, which provides that the President of the District Forum shall, receive the salary of the Judge of a District Court, if appointed on part-time basis or an honorarium of Rs. 150/- per day, if appointed on whole-time basis. Sub-rule (2) of Rule 3 of Rules, 1987 provides the salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government. Sub-rule (6) of Rule 3 of Rules, 1987 further provides that the terms and conditions of the service of the President and the members of the District Forum shall not be varied to their disadvan-taged during their tenure of office.

15. The Rules are not happily drafted. These rules provide that President of District Consumer Forum will receive the salary of a Judge of District Court,.

RHJS officers who can be posted as District Judge, District Judge has a particular pay scale and what amount of salary he will get, that depend upon how senior he is, in service. Therefore, salary of Judge in District Court varied. Thus, what amount of salary an officer will get when he will be appointed, that depend how senior he is in service. Not only that even there is not provision in the Rules as to what will be the salary of the President of District Consumer Forum on or from the date of his superannuation from RHJS for the rest of the period of his tenure as President of District Consumer Forum.

16. Therefore, we have to take the harmonious construction of the Rules and infer the intention of the Legislature and also to consider whether Rule 337 of the Rajasthan Service Rules is applicable on his superannuation from his Rajasthan Higher Judicial Service, what salary he will get as President of District Consumer Forum from the date of retirement from RHJS.

17. Rule 337 of Rajasthan Service Rules, 1951 provides pay of re-employed pensioners i.e. in case any retired employee is re-employed, what he will get. Whether he can get the pension in addition to pay or whether he will get pay after deduction of the pension amount.

18. Before we go into the issues in these cases, we would like to refer some decisions of this Court and the decisions of their Lordships of the Supreme Court.

19. In *S.S. Gupta v. State of Rajasthan* (4), the learned Single Judge of this Court has taken the view that Rules 337 of Rajasthan Services Rules, 1951 has no application and in view of Sub-rule (6) of Rule 3 of Consumer Protection (Rajasthan) Rules, 1987, the RHJS Officer who joined as President, District Consumer Forum for 5 years but retired from RHJS before completion of 5 years, the pension should not be deducted from his salary. In para 7, this Court has observed as under:-

"The rule clearly lays down that the President of the District consumer Forum, is entitled to the full salary payable to a Judge of a District Court and to interpret this rule so as to infer that the President would entitled to his pension plus the balance amount of the salary of a District Judge amounts to twisted reading of rule in this regard, in my opinion, it may further be noted that Sub-rule (6) of Rule 3 also clearly lays down that the terms and conditions of the service of the President and member of the be varied to their disadvantage during the tenure of office, which also clearly protects the right of the petitioner since he has been receiving the full salary of the President of a District Consumer Forum ever since he joined it and an order deducting it by applying Rule 337 of the R.S.R., 1951 was passed only at a later stage on 19.2.1996 and 14.6.1996 completely ignoring Sub-rule (6) of Rule 3, referred to hereinabove. While the petitioner is functioning as a full time President of the District Consumer Forum for a period of five years, which is going to expire only on 17.6.1999, the rules applicable to a retired District Judge cannot be applied to a full time president of the District Consumer Forum so as to justify the impugned order to the effect that dearness

allowances, city compensatory allowance and other allowances payable to the petitioner only on the salary after deducting the amount of pension. I also find no jurisdiction in denying him officiating allowance, car-allowance and other allowances by treating him a retired District Judge by retired District Judge by applying Rule 337 of RSR, 1951, since the petitioner's appointment has been made in terms of a clear provision under the Consumer Protection Act regarding which there are clear rules pertaining to the salary and terms and conditions is also precluded from varying it to the disadvantage of the President during the tenure of his office. In my opinion, if the petitioner's appointment as a President of the Consumer Forum was, to be treated as a case of reappointment so as to apply Rules 337 of RSR, 1951, the same ought to have been disclosed to the petitioner at the time of offer of his appointment as a full time President of the District Consumer Forum while he was working as District Judge so that the petitioner could make a choice as to whether he was interested in joining as President of the Consumer Forum or was interested in continuing as a full-fledged District Judge. The petitioner having already served as a President of the Forum with full salary of a District Judge as per Rule 3 of the Consumer Protection (Rajasthan) Rules, 1987, the same could not have been deducted by applying a fresh service condition in the midst of his tenure by applying Rule 337 of RSR, 1951. It is quite clear that the Rajasthan Service Rules, 1951 is a general rule governing all types of services in all types of services in Rajasthan, whereas the Consumer Protection Act, 1986 is a special Act governing the terms and conditions of their tenure specifying their emoluments and other benefits. It is an established principle that a general Act or Rule cannot be allowed to prevail over a special Act or Rule, which in this case is Consumer Protection Act, 1986."

20. In case of *State of Rajasthan v. Amarnath Purohit* (5), the Division Bench of this Court has taken the view that if any RHJS Officer, who has been appointed as president, District Consumer Forum for 5 years and before completion of 5 years if he is superannuated from Rajasthan Higher Judicial Service, he no more remains an officer of the Rajasthan Higher Judicial Service through Rule 337 of RSR, 1951 is strictly not applicable but the pension on his superannuation should be deducted from his salary when the salary is paid to such officer during his rest of his tenure as President, District Consumer Forum. In para 11 the Division Bench of this Court observed as under:-

"Salary of the Judge of a District Court is a vague term. The Senior Most Judge in RHJS is also a Judge so a District Court and an officer who is at the bottom of the seniority list of the RHJS is also a Judge of the District Court. All of them are technically eligible for appointment as District Judge which is one of the qualification for being appointed as President, District Forum. There are different scales in which the Judges of the District Court are fixed. Which of these scales will be applicable to a person appointed as President of the District Form is not specified."

21. In para 13, this Court also referred Rule 151 of the Rajasthan Civil Services

(Pension) Rules, 1996 which provides that in case of re-employment the pay should be fixed at the minimum of the pay scale in that service. It has further been held that by deducting pension from the salary on the superannuation from RHJS, the salary of the officer has not been reduced at all then what he was getting before superannuation in the RHJS.

22. The Kerala High Court has taken the contrary view taken by the Division Bench of this Court. In case of *State of Kerala v. Govindankutty* (6), the Kerala High Court has referred the decision of their Lordships in case of *Nakara v. Union of India* (7), and held that while the employee has right to get his pension and allowances due thereunder, therefore, he has a statutory right and the remuneration for his post-retirement work in the Consumer Redressal Forum has to be separated and independent of what is due to him by way of pension, therefore, pension should not be deducted from his salary after retirement from Judicial Service of the State.

23. In case of *V.S. Mallimath v. Union of India and Anr.* (8), the issue before their Lordships whether pension should be deducted from the salary of Chairman or Member of the National Human Rights Commission. Their Lordships held that as per Rule 3(b), the pension should be deducted from the salary and observed at page 9 as under:-

"We have, therefore, no hesitation in coming to the conclusion that the proviso to Rule 3(b) would apply to the retired Chief Justice of India or the retired Chief Justice of a High Court and the pension which they are in receipt of, apart from the disability or would pension, has to be deducted from their salary, which they are entitled to under the Rules."

24. In case of *M.S. Chawla and Ors. v. State of Punjab and Anr.* (9), their Lordships have considered that the pension which appellants have received of their previous service as District Judge can be deducted from the salary of the President of the District Consumer Forum fixed under the provisions of the Consumer protection Act and the Rules framed thereunder. The Lordships held that pension should be deducted from the salary which a retired District Judge gets as President of the District Consumer Forum and in the end, their Lordships observed at Page 396 as under:-

"We see no infirmity with the Government order dated 25th of January, 1996 and under the said notification the salary of re-employed District Judges as President of the District Consumer Forum, have rightly been fixed, taking into account the pension, which they are in receipt of, as retired District Judges. The contention of Mr. Rao that the Salary fixed under the Act and the Rules framed thereunder is being altered by an administrative order is of no force, in view of the legal provisions enumerated above and in fact, it is the provision of the Punjab Civil Services Rules, dealing with the salary of re-employed pensioners, which governs the field."

25. Mr. Jagdeep Dhankar, learned Senior Advocate for the RHJS officers has

submitted that when a judicial officer in service appointed as President, District Consumer Forum, his salary cannot be fixed less than what he was getting at the time of appointment, on his superannuation from Rajasthan Higher Judicial Service, his salary should also not be reduced and he should get pension in addition to the salary what he is getting on the date of his superannuation in RHJS. If pension is deducted, that would amount to put him in disadvantageous position than what he was getting on the date of superannuation from the Rajasthan Higher Judicial Services.

26. Mr. Dhankar, learned Senior Advocate has further submitted that not only the pension but he is also entitled for other allowances which the officer was getting while he was appointed as President, District Consumer Forum, even after superannuation from the Rajasthan Higher Judicial Services till he complete his tenure as President, District Consumer Forum.

27. The other learned counsel for the parties have adopted the arguments of Mr. Dhankar, learned Senior Advocate.

28. Mr. R.N. Mathur, learned Additional Advocate General has submitted that in Rajasthan Higher Judicial Services, there are three classes who can be appointed as President of the District Consumer Forum i.e. (a) an officer of Rajasthan Higher Judicial Service, after his retirement from the Rajasthan Higher Judicial Services; (b) RHJS officer in service; he may have more than 5 years service in Rajasthan Higher Judicial Service, he can come back to his cadre after completion of 5 years tenure as President of District Consumer Forum; (c) other class of officers of RHJS is an officer who has been appointed for 5 years as President of District Consumer Forum while in service, but before completion of 5 years as President of District Consumer Forum, he retires from RHJS.

29. What he will get as President of Consumer Forum from the date of his superannuation from RHJS. Mr. Mathur submits that an officer who joins Consumer Forum while he was in service and he came back to his cadre of RHJS after completion of 5 years and the officer who has been appointed as President in the Consumer Forum after retirement from RHJS, he will not get any amount in the name of pension. The officer who joins as President in the Consumer Forum and retired during tenure of 5 years in Consumer Forum from RHJS, there is no jurisdiction to give him the benefit of salary as President of Consumer Forum in addition to pension as pension has not been earning in a day or two, it is earning of the whole tenure of his service period. Therefore, there is no jurisdiction to extend the benefit of pension in addition to salary what he was getting on the date of the retirement from RHJS.

30. We are concerned with the last class of RHJS Officers, what he will get after superannuation from RHJS. As we have said earlier in the aforesaid paras that there is no specific rule which governs this type of cases i.e. if a judicial officer appointed while in service of RHJS for five years but before his completion of five years" tenure in the District Consumer Forum he retires from RHJS, what will be

his salary and perks after retirement from RHJS. Thus, rule is defective to this extent as there is no such provision in the Rules to govern this type of situation. Therefore, we have to see the harmonious construction of rules after going through these Rules and relevant provisions of the Consumer Protection Act.

31. Sub-section (3) of Section 10 of the Act, 1986 provides for the salary or honorarium and other allowances payable to the members of the District Forum. The relevant provision of Sub-section (3) of Section 10 reads as under:-

"The salary or honorarium and other allowances payable to conditions of service of the members of the District Form shall be such as may be prescribed by the State Government."

32. Sub-section (2) of Section 30 of the Consumer Protection Act, 1986 empowers the State Government to make rules. The relevant provision of Sub-section (2) of Section 30 reads as under:-

"Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier, and shall not be eligible for re-appointment:

Provided that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in Sub-section (1) in relation to the category of the member who has resigned."

33. Rule 3 of the Rajasthan Consumer Protection Rules, 1987 provides for salaries and other allowances and terms and conditions of the President and Members of the District Forum which reads as under:-

"3. Salaries and other allowances and terms and conditions of the President and Members of the District Forum (Section 19(3):

(1) The President of the District Forum shall receive the salary of the Judge of a District Court appointed on part-time basis or an honorarium of Rs. 150/- per day if appointed on whole-time basis. Other members if sitting on whole-time basis shall receive a consolidated honorarium of Rs. 2,000/- per months and if sitting on part-time basis, a consolidated honorarium of Rs. 1000/- per day for the sitting.

(2) The President and the members of the District Forum shall be entitled for such travelling allowance and daily allowance on official tour as are admissible to Grade-I Officer of the State Government.

(3) The salary, honorarium and other allowed shall be defrayed out of the Consolidated Fund of the State Government.

(4) Before appointment, the President and the members of the District Forum shall have to take an undertaking that he and his relatives as defined in the

Companies Act, 1956 (Central Act I of 1956) does not and will not have any such financial or other interests as is likely to affect prejudicially his functions as a member.

(5) In addition to the provisions of Section 10(2) of the Act the State Government may remove from the office, the President and member of a District Forum who,

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude, or

(c) has become physically or mentally incapable of acting as such President or member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or member shall not be removed from his office on the ground specified in Clauses (d) and (e) of the (Sub-rule (5) except on an inquiry held by the State Government in accordance with such procedure as it may specify in this behalf and finds the member to be guilty on such ground.

(6) The terms and conditions of the service of the President and the members of the District Forum shall not be varied to their disadvantage during their tenure of office.

(7) Where any vacancy occurs in the office of the President of the District forum, the senior-most (in order of appointment) member of District Forum, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the District Forum.

(8) When the President of the District Forum is unable to discharge the functions wing to absence, illness or any other cause, the senior-most (in order of the appointment) member of the District Forum shall discharge the functions of the President until the day on which the President resumes charges of his functions.

(9) The President or any member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organisation which has been the subject of any proceeding under the Act during his tenure for a period of 5 years from the date on which he ceases to hold such office."

34. Rule 337 of the Rajasthan Service Rules, 1951 provides what pay and pension re-employed person will get. The relevant provision of Rule 337 of the Rajasthan Service Rules, 1951 reads as under:-

"337. Pay of re-employed pensioners. - No Government servant, Civil or Military may retire with the view of being re- employed and drawing pension in addition to pay whether in the general service or in the service of any Local Fund."

35. There is no doubt that if any RHJS officer has been appointed as President of the District Consumer Forum, he gets the same salary including perquisites, allowances and benefits as were payable to him as a Judge of the District Court. This becomes terms and conditions of his service in the context of Rule 3 of Rules, 1987, about which there is no controversy between the parties.

36. But whether all District Judges are getting same salary. All are not getting the same salary, that depends upon how senior he is in service. After earning increment the senior District Judge may get higher pay than the District Judge who has recently been promoted or appointed. There is a difference in the amount of salary of Judge in District Court; the Amount depend upon his seniority in Rajasthan Higher Judicial Service, though both are called the Judges of District Court. In our view, the amount of salary of President of District consumer Forum will be the amount he was getting in Rajasthan Higher Judicial Service at the time of appointment in Consumer Forum as President of District Consumer Form.

37. But, we have not much concerned with this issue.

38. The real issue before us is that a Rajasthan Higher Judicial Officer who retires as a member of RHJS before completion of 5 years" tenure in the district Consumer Forum, what salary he will get after his retirement from Rajasthan higher Judicial Service and whether he will get the pension in addition to salary and other allowances after retirement from Rajasthan Higher Judicial Service?

39. Mr. Dhankar, Sr. Advocate has emphasised on the words mentioned in Sub-rule (6) of Rule 3 of the Rules, 1987 "the term and conditions of service shall not be varied to their disadvantage during their tenure of office". He has submitted that when the tenure of president will continue for 5 years in his tenure period, he should not be put to disadvantageous position till his retirement from the District Consumer Forum. If pension is deducted from his salary, that would amount to put him in disadvantageous position. With respect, we are unable to accept the submission of Mr. Dhankar that if pension is deducted from the salary after his retirement from the Rajasthan Higher Judicial Service, he will be put in disadvantageous position to the position what he was before retirement from Rajasthan Higher Judicial Service.

40. It is true that after deduction of the pension from the salary he will get less amount of salary as President, Consumer forum but total amount i.e. salary plus pension will come to the same amount. Therefore, it cannot be said that he gets less amount than what he was getting before retirement from Rajasthan Higher Judicial Service.

41. The judicial officer of Rajasthan Higher judicial Service who are appointed

after retirement from judicial service, their pension is deducted from the salary and on his appointment as President he will get salary at the minimum of the pay scale minus pension. But a judicial officer who has been appointed as President, District Consumer Form while in service, just before 15 days from the date of his retirement from Rajasthan Higher Judicial Service, he will get the last drawn salary from the date of his retirement in RHJS and not the minimum of pay scale, even though he retires from RHJS, just after 15 days from the date of his appointment in Consumer Forum. Thus, he will get the higher pay from the Judicial Officer who has been appointed after retirement.

42. There is no jurisdiction to allow the pension in addition to pay to judicial officer who has been appointed while in judicial service, that would amount to give him double benefit over the officer who has been appointed after their retirement from RHJS. We do not think that this is the intention of the Legislature. Pension has not been earned only in 15 days but it is an earning of total period of Service. Therefore, 15 days difference in retirement in Rajasthan Higher Judicial Service is not justified to discriminate between the officer who retires before 15 days or after 15 days from the date of appointment in District Consumer Form.

43. We agree that Rule 337 of Rajasthan Service Rules, 1951 has no application as no formal re-employment is there on the post of President, District Consumer Forum on the date of his retirement from RHJS, after his superannuation in the Rajasthan Higher Judicial Service, he cannot be said to be in Rajasthan Higher Judicial Service. His position cannot be better on his retirement from an officer of Rajasthan Higher Judicial Service who has retired and thereafter appointed as President, District Consumer Forum, at least for the purpose of deduction of pension from salary. But his salary can not be fixed at the minimum of the pay scale after superannuation from the RHJS, as per rules he shall not get less amount than what he was getting on the date of superannuation from Rajasthan Higher Judicial Service till he complete his tenure in consumer Forum.

44. Mr. Dhankar, learned Senior Advocate has relied on the decision of Kerala High Court in case of Govindankutty (supra) wherein the view has been taken that the pension is statutory right. Kerala High Court has also referred the case of their Lordships in case of Nakara. The Kerala High Court has taken the view that pension should not be deducted from the salary of the President of the District Consumer Forum. With respect, we do not agree with the learned Judges of the Kerala High Court. In case of D.S. Nakara (supra), the issue before their Lordships was that whether discrimination can be made between he retired employees from a particular date and the employees who retired thereafter, whether the benefit of revised pension scheme can be denied to the retired employees who retired before that particular appointed date. Their Lordships have struck down that rule which discriminate between the employees retired from a particular date and who retired after that particular date. The cut off date was treated as arbitrary.

45. The RHJS officer who retired from RHJS during the period of tenure of President and who has been appointed after retirement from RHJS in Consumer Forum, both stand on the same footing, so far deduction of pension from salary is concerned. But at the same time if a judicial officer in Rajasthan Higher Judicial Service is appointed as President of the district Consumer Forum, Sub-rule (6) of Rule 3 of Rules, 1987 protect his last drawn salary as he cannot be put to disadvantageous position that what he was getting at the time of appointment. Therefore, in case of appointment of RHJS as President, District Consumer Forum while in Rajasthan Higher Judicial Service whatever he was getting his pay/salary on the date of his retirement from RHJS, his pay is protected and the total amount payable on the date of retirement, that cannot be reduced.

46. In case the president retires from Rajasthan Higher Judicial Service and get all benefit of retirement on his superannuation from RHJS, his pension should be deducted as pension plus what he is getting the salary after deduction of the pension, the amount is same what he was getting on the date of his superannuation in RHJS. By deduction of pension it cannot be said that he has been put to disadvantageous position.

47. Sub-rule (6) of Rule 3 of Rules, 1987 provides that the terms and conditions of service should not be varied to disadvantage of the judicial officer during his tenure. As has been stated hereinabove deduction of pension from salary cannot be said to put him in disadvantageous position as he will get the same total amount. But the other benefits and allowances which he was getting as Rajasthan Higher Judicial Service will continue till he completes his tenure. If these allowances are denied on his superannuation from RHJS that will tantamount to vary terms and conditions of his service as President of Consumer Forum to his disadvantage while the continues as such notwithstanding his retirement from RHJS and that will be in violation of Sub-rule (6) of Rule 3 of the Rajasthan Consumer Protection Rules, 1987.

48. Some doubts are raised that if an officer in Rajasthan Higher Judicial Service has been appointed as President of the District Consumer Forum and if the retires from RHJS before completion of 5 years tenure period, will he continue as President in the District Consumer Form or his appointment in District Consumer Forum will come to an end with the superannuation of the officer in Rajasthan Higher Judicial Service and whether he should be re-appointed after his superannuation in RHJS for rest of the period in Consumer Forum?

49. Clause (a) of Sub-section (1) of Section 10 is very clear on the issue. The qualification of a President is that a person who is, or who has been, or is qualified to be a District Judge, who shall be the President of District Consumer Forum. The officer who has been appointed as President of District Consumer Forum while he was in service at the time of appointment, he was qualified for the appointment as President in District Consumer Forum and Sub-section (2) of Section 10 further provides that the term of office of the President shall be five

years or up to the age of 65 years, whichever is earlier and shall not be eligible for re-appointment. When statute prohibits the re-appointment, there is no question of re-appointing him on superannuation from Rajasthan Higher Judicial Service and once he was appointed as a President of District consumer Forum for 5 years or till he attain the age of 65 years, whichever is earlier, he will continue to hold the post of President in District Consumer Forum till he completes his tenure period i.e. 5 years. Superannuation in Rajasthan Higher Judicial Service during tenure does not affect the appointment of the officer for a period of 5 years.

50. Therefore, no fresh appointment order need be passed to continue him for completion of the period of 5 years. Statute itself provides the tenure of 5 years and when he was eligible at the time of appointment, there is no question to cut short his tenure period. He will continue for 5 years tenure period and superannuation from Rajasthan Higher Judicial Service will not come in his way for completion of 5 years tenure period, thus, in our view, when an officer of judicial service is appointed as president of District Consumer Forum for 5 years and he retires from Rajasthan Higher Judicial Service before completion of 5 years in Consumer Forum, he will not be re-appointed as President of District Consumer Form for the rest of the period, specially there is no provision of re-appointment in the Act, 1986. Rule 337 of the Rajasthan Service Rules, 1951 strictly has no application.

51. In the light of above discussions, we answer the questions referred to this Bench as Under:-

(1) The President, District Consumer forum gets the salary of a District Judge on his appointment i.e. he will get salary what he was getting in Rajasthan Higher Judicial Service on the date of his appointment.

(2) The person who is a member of Rajasthan Higher Judicial Service and appointed as a President, District Consumer Forum, he will continue to get the same salary in pay scale of RHJS till he reaches to the age of superannuation in Rajasthan Higher Judicial Service.

(3) A person who has been appointed as President of the District Consumer Form while in Rajasthan Higher Judicial Service on his retirement from the Rajasthan Higher Judicial Service, he will get the last drawn salary which he was getting on the date of his superannuation from Rajasthan Higher Judicial Service minus pension which he gets on retirement from Rajasthan Higher Judicial Service.

(4) A person who has been appointed as President of the District Consumer Forum while in Rajasthan Higher Judicial Service, on his superannuation from Rajasthan Higher Judicial Service, he cannot be treated as member of the Rajasthan Higher Judicial Service after his superannuation from Rajasthan Higher Judicial Service though he will get all the benefits and allowances which RHJS officers gets till his completion of the tenure in District Consumer Forum, but pension has to be deducted from his salary.

(5) The person who has been appointed as President of the District Consumer Forum while in Rajasthan Higher Judicial Service retires from Rajasthan Higher Judicial Service before completion of 5 years, there is no question of his re-employment in Consumer Forum for rest of the tenure Period. He will continue for 5 years in Consumer Form on the basis of his statutory appointment in Consumer Forum.

(6) A person who has been appointed as President of the District Consumer Forum while he was in Rajasthan Higher Judicial Service, after his retirement he will have the status as that of the President of District Consumer Forum.

(7) The person who has been appointed as President of the District Consumer Forum while he was in Rajasthan Higher Judicial Service, one he was given the appointment as President of the District Consumer Forum for 5 years, he will hold that post for 5 years irrespective of his superannuation in the Rajasthan Higher Judicial Service. Therefore, the superannuation in the Rajasthan Higher Judicial Officer will not affect his tenure of 5 years in District Consumer Forum.