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**(1997) 03 PAT CK 0004**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 8711 of 1989**

Sunil Kumar Choudhuri

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 28-03-1997

**Acts Referred:**

Constitution of India, 1950 — Article 14, 221, 221(1), 221(2)  
High Court and Supreme Court Judges (Conditions of Service) (Amendment) Act, 1988 — Section 4  
High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 14  
Repealing and Amending Act, 1988 — Section 2, 4

**Citation :** (1997) 1 PLJR 832

**Hon'ble Judges :** N. Pandey, J; A.K. Ganguly, J

**Bench :** Division Bench

**Advocate :** Jitendra Singh, for the Appellant; Y.V. Giri and Ganesh Prasad Jaiswal, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.K. Ganguly, J.—In this writ petition the Petitioner raises some questions relating to the entitlement about pensionary benefits and complaints of denial of the constitutional guarantee given to him at the time of his appointment as a Judge.

2. The facts which are necessary for the purposes of deciding the case do not contain much of a dispute and are narrated below:

When the Petitioner was appointed a High Court Judge, he was guided in matters relating to his pension by the High Court Judges (Condition of Services) Act, 1954 (hereinafter referred to as the 1954 Act) as amended upto the date of his appointment. Under the said Act, Section 14 provides for matters relating to pension payable to the Judges. Relevant provisions of Section 14 of the 1954 Act are set out below:

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 I 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:

Provided further that if a Judge at the time of his appointment is in receipt of a pension other than a disability or wound pension in respect of any previous service in the Union or a State, the pension payable under this Act shall be in lieu of, and not in addition to, that pension.

3. It appears from a perusal of Section 14 of the said Act that it refers to a Schedule. Under the said Schedule there are several parts and it is not in dispute that the Petitioner comes in Part I.

4. On the date of the Petitioner's appointment, it was known to the Petitioner and all concerned that the Petitioner would retire on attaining the age of 62 years on 25.6.1986. Therefore, when the Petitioner was appointed on 28th May, 1974 the Petitioner had to his credit a clear tenure of 12 years as a Judge of the High Court.

5. It appears from the provisions set out in Clause 8 of the First Schedule of the 1954 Act that on completion of 12 years service a Judge is entitled to the maximum amount of pension. After the appointment of the Petitioner, the said 1954 Act suffered various amendments. By one amendment, namely, by the Act 38 of 1986, the said paragraph 8 was amended to the effect that for maximum pension instead of 12 years, 14 years of service was provided.

6. The contention of the Petitioner is that this amendment has been introduced after the appointment of the Petitioner inasmuch as the said amendment was made in 1976 with retrospective effect from 1st October, 1974.

7. The Petitioner contends that by such amendment's right to pension as existing on the date of his appointment has been varied to his disadvantage. In support of this submission the Petitioner relies on Article 221 of the Constitution of India which is quoted below--

221. Salaries etc., of Judges.--(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such, allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

8. Under the said provisions of Article 221 of the Constitution, it is clearly provided in the proviso that neither the allowances of a Judge nor his rights in respect of leave of absence or pensions shall be varied to his disadvantage after his appointment.

9. The other contention raised by the learned Counsel for the Petitioner is that the said 1954 Act has been subsequently amended in the year 1986 and the said amendment has been made effective with effect from 1st November, 1986. Learned Counsel for the Petitioners submits that the pay of the High Court Judges has been amended by an amendment of the Constitution, namely, 54th Constitutional Amendment Act, 1986 and as a result of the said amendment Act, 1986 the salary of the Judges has been enhanced from Rs. 3500/- to Rs. 8000/- per month. The Constitutional amendment has been given effect from 1st April, 1986.

10. The learned Counsel for the Petitioner contended that the Amendment Act No. 38 of 1986 must be given retrospective effect from the said date i.e. 1st April, 1986. It was contended that as the purpose of both the amendments was to increase the emoluments and salary of the High Court Judges and as the Constitutional amendment has been given effect to with effect from 1st April, 1986, the amendment of 1954 Act by Act 38 of 1986 should be given effect from the said date. It was also contended that if the said Amendment Act 38 of 1986 is not given effect to from 1st April, 1986, the same would amount to indulging in discrimination and will offend the provisions of Article 14 of the Constitution of India.

11. In support of the aforesaid contention learned Counsel for the Petitioner relied on the decision of the Hon'ble Supreme Court in the case of D.S. Nakara v. Union of India reported in AIR 1983 SC 138.

12. This Court is not impressed with the aforesaid submission. It is well known that when a legislature has framed a law, it is competent to give it a retrospective or prospective effect. In the instant case the said Amendment Act No. 38 of 1986 has been given effect from 1st November, 1986 and in doing so the legislature has acted within its authority.

13. It is well known that the legislature is sovereign in its field and when a particular law has expressly been given effect from a particular date, the Court cannot, unless there is a Constitutional impediment, read that it will come into effect from an anterior date. In the instant case the submission made by the learned Counsel for the Petitioner is that in making the said Amendment Act operative with effect from 1st November, 1986, the legislature has vertically divided a homogeneous group into two artificial divisions and without any nexus in support of the said divisions. The said argument is wholly a misconceived. There is no artificial division of any homogeneous group here. The said Amending

Act applies equally from a particular date to all the persons who are governed under the 1954 Act.

14. Apart from that a perusal of the provisions of Article 221 of the Constitution shows that the salary of a Judge of the High Court and the allowances available to a Judge of the High Court including a law relating to fixation of pension of the Judge cannot be placed on an equal footing.

15. Sub-article (1) of Article 221 of the Constitution of India deals with the salary of a Judge. The amount of such salary of a Judge is provided in the Second Schedule to the Constitution and cannot be altered save and except with the amendment of the Constitution whereas allowances and rights relating to pension of a Judge can be altered on the basis of a legislation. Therefore, the argument that the Constitutional amendment and the said Amendment Act 38 of 1986 should be given effect to from one date is wholly a misconceived one. Both the aforesaid fields of legislation, one being a Constitutional amendment and Anr. being an amendment of 1954 Act operate in two different fields. Therefore, if the legislature in its wisdom gives a different date for operation of the aforesaid two Acts, it cannot be said that the equality Clause under Article 14 has been violated. Therefore, there is no substance in this point.

16. In so far as the first point is concerned, this Court is of the view that the said point has some substance. In view of the proviso to Sub-article (2) of Article 221 of the Constitution, it is clear that the right of a Judge in respect of his pension cannot be varied to his disadvantage after his appointment. In the instant case the Petitioner was appointed a Judge of the High Court on 28th May, 1974. The relevant provisions of the First Schedule relating to pension under Clause 8 at the time of the appointment of the Petitioner was as follows--

Notwithstanding anything contained in the foregoing provisions of this Part, the pension payable to a Judge who has completed twelve years of service for pension, including not less than six years of service as Chief Justice of one or more of the High Courts, shall be Rs. 20,000 per annum.

17. The same was altered by an amendment to the 1954 Act by Amendment Act No. 35 of 1976. As a result of the said amendment, the said Clause was altered as follows--

8. Notwithstanding anything contained in the foregoing provisions of this part, the pension payable to a Judge who has completed fourteen years of service for pension, including not less than six years of service as Chief Justice of one or more of the High Courts, shall be Rs. 28,000 per annum.

18. The said Amendment Act No. 35 of 1976 was enacted on 18th March, 1976 and it was given retrospective effect from 1st October, 1974. The said Amendment Act Tiaroely, Amendment Act No. 35 of 1976 was repealed in view of the provisions contained under the Repealing and Amending Act, 1980 (Act No. 19 of 1988). Section 2 of the aforesaid Repealing Act refers to a Schedule which

is described as First Schedule. The said First Schedule contains certain enactment which were repealed to the extent mentioned in the 4th column of the said First Schedule. It appears from a perusal of the said First Schedule that the said Amendment Act No. 35 of 1976 was repealed and from the fourth column of the said First Schedule it appears that the whole of the said Amendment Act was repealed.

19. After repeal of the said Amendment Act No. 35 of 1976 by the aforesaid Repealing Act, Anr. Act being Act No. 20 of 1988, namely, The High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1988 came into existence. Under the said Amendment Act, 1988, namely, Act 20 of 1988 various amendments to the First Schedule of 1954 Act has been provided by Section 4 of the said Amendment Act. Section 4 of the Amendment Act, 1988 shall be deemed to have come into force on 1st day of November, 1986. Section 4 of the said Act provides that paragraph 8 of 1954 Act will be amended as follows--

(iv) in paragraph 8, for the word "twelve" and for the figures "20,000", the word "fourteen" and the figures "54,000" shall respectively be substituted.

The said Amendment Act, 1988 is still holding the field.

20. The contention of the learned Counsel for the Petitioner is that but for the said Amendment, the Petitioner who has completed 12 years of service as a Judge would have been entitled to the maximum amount of pension provided under the said Act of 1954 as amended.

21. Since the amendment was made to Clause 8 of the First Schedule of 1954 Act as a result of which 12 years have become 14 years, the Petitioner's right to maximum full pension on completion of 12 years of service has been altered to his disadvantage. The Constitutional guarantee which was available to the Petitioner under Article 221 of the Constitution at the time of his appointment has been thus breached by the aforesaid Act.

22. Learned Counsel for the Respondents submitted that there has been an upward revision of the Petitioner's pension since the time of his retirement and as a result of the said revision the Petitioner received higher amount of pension than the one which he was getting at the time of his retirement. Therefore, his rights relating to his pension has not been altered to his disadvantage.

23. It is of course true that the amount of pension of the Petitioner has been revised as a result of which the Petitioner is getting a higher amount of pension but the Petitioner is at the same time not able to get the highest amount of pension which is available to a person who had completed 14 years of service as a Judge of the High Court. At the time when the Petitioner accepted the judgeship, it was provided under Schedule I of 1954 Act that the highest amount of pension will be available to a Judge on completion of 12 years of Judgeship as a High Court Judge. The said period of 12 years has now been enhanced to 14 years, and, therefore, it is not possible for the Petitioner to get the highest

amount of pension which is available to a Judge who has completed 14 years of service. This alteration has been made after the Petitioner has accepted the judgeship and this alteration is certainly to the dis-advantage of the Petitioner. The learned Counsel for the Respondents further submits that there is nothing known as maximum pension under the 1954 Act or either under the subsequent amendment and as such prayed that this argument of the Petitioner's Counsel has no force. But the Objects and Reasons behind the Amending Act 35 of 1976 shows otherwise. Relevant extracts from the Objects and Reasons are set out below:

While the maximum pension of Government Servants on retirements has been increased on the recommendation of the Third Pay Commission, there has been no increase in the pension of Judges since the commencement of the Constitution. It is proposed to increase the pension of the Judges by about 40 per cent, and fix the maximum as Rs. 28,000 per annum in the case of the Chief Justice and Rs. 22,400 per annum in the case of other Judges. The maximum will be reached on completion of 14 years of service. The minimum pension is also proposed to be increased by 40 per cent from Rs. 6,000/- per annum to Rs. 8,400 per annum.

(Underlined for emphasis).

The objects and reasons behind the amending Act thus make it empty clear that there is a concept of maximum pension after putting in a qualifying number of years of service as a Judge.

24. From paragraph 4 of the judgment of the Supreme Court in the case of M.L. Jain Vs. Union of India, it will also appear that the Union of India took a stand that there is a concept of maximum pension after completion of 14 years of service.

25. Now turning to the Constitution, I am of the view that the guarantee given to the Petitioner under Article 221 of the Constitution is a specific guarantee, namely, right of the Petitioner in respect of his pension cannot be altered to his dis-advantage. The language used in the Constitution is that neither allowances of a Judge nor his rights in respect of pension shall be varied to his disadvantage after his appointment.

26. A right has been jurisprudential construed as a legally protected interest and the right which has been mentioned in Article 221 of the Constitution in respect of a Judge is a positive "claim right". This claim right necessarily implies a right against a person or persons who owe a corresponding duty to the right holder. Therefore, the Constitutional guarantee in respect of pension of a Judge at the time of his appointment given under Article 221 of the Constitution of India is a specific and positive right.

27. The said right has been conferred on the Judges in order to achieve a constitutional goal, namely, to ensure the independence of the judiciary. The

concept of independence of the judiciary is an essential attribute of the rule of law which is again a basic feature of the Constitution.

28. In order to highlight the aforesaid concept of independence of judiciary, the guarantee has been given under Article 221 of the Constitution of India in such specific and clear term. So the intention of the framers of the Constitution is not in doubt. The said right which has been given to a Judge at the time of his appointment cannot be diluted by the subsequent legislative amendment which has the effect of undermining the Constitutional guarantee and its avowed object.

28-A. In other words when the Petitioner was appointed a Judge of the Patna High Court, 12 years" tenure as Judge was considered sufficient to qualify for the highest amount of pension. Subsequently the said period of 12 years has been extended to 14 years but such amendment cannot affect the Constitutional guarantee which has been given to the Petitioner under Article 221 of the Constitution at the time of his appointment relating to his entitlement to get full pension. The explanation given by the Respondents in their affidavit does not touch this aspect of the matter.

29. Learned Counsel for the parties cited the decisions in the case of Shiv Dayal Shrivastava and Another Vs. Union of India (UOI) and Others, and also the decisions of All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, and Union of India and another Vs. Deoki Nandan Aggarwal, . But in none of those decisions this question has been considered. As such those decisions are not applicable in deciding the facts of the present case.

30. This Court, therefore, holds that by the subsequent amendment of 1954 Act the Petitioner's right to get maximum pension on completion of 12 years of service in view of the then existing provision of Clause 8 of the First Schedule to 1954 Act has been breached. In that view of the matter, this Court holds that the Amendment of 1954 Act incorporated by subsequent amending Act will not affect the Petitioner's right to get full pension in terms of Clause 8 of the First Schedule, to 1954 Act as it stood on the date of the Petitioner's appointment, namely, 28.5.1974. Therefore, this Court declares that in so far as the Petitioner is concerned, his right to get full pension must be governed by the law as it stood on 28th May, 1974. The benefit of subsequent upward revision of pension amount will be available to the Petitioner. But the said benefit must be made available to the Petitioner on the basis that service as a Judge for 12 years must be taken as the qualifying service for getting the highest amount of pension available to a High Court Judge and this the Petitioner is entitled to get; in view of the provisions of Article 221 of the Constitution. The Respondents are, therefore, directed to recalculate the Petitioner's pension in view of the above declaration of law within a period of three months from the date of receipt/communication of a copy of this judgment and give the Petitioner all the arrears to which the Petitioner is entitled to as a result of such re-calculation within three months thereafter.

31. In so far as the Petitioner's prayer for commutation of his pension and family pension is concerned, this Court does not pass any order and leave the matter to be worked out by the Respondents on the basis of the Petitioner's representation, if any, made in respect of those grievances.

32. This writ application is, therefore, allowed to the extent indicated above. There will be no order as to costs.

N. Pandey, J.

33. I agree.