

(1997) 07 KL CK 0033
In the High Court Of Kerala
Case No : W.A. No. 804 of 1992

Union of India (UOI)

APPELLANT

Vs

Namboodiripad N.D.P.

RESPONDENT

Date of Decision : 10-07-1997

Acts Referred:

Citation : (1997) 3 ILR (Ker) 572 : (1998) 1 LLJ 170

Hon'ble Judges : K.G. Balakrishnan, J;C.S. Rajan, J

Bench : Division Bench

Advocate : C. Kochunni Nair, for the Appellant; Govind K. Bharathan, for the Respondent

Final Decision : Allowed

Judgement

C.S. Rajan, J.—The first respondent, who is the petitioner in the Original Petition retired from service as a Judge of the High Court of Kerala with effect from August 1, 1980. The pension and other retirement benefits of the High Court Judges are determined on the basis of Part-III of 1 Schedule of the High Court Judges (Conditions of Service) Act, 1954 as amended by the amending acts, 1986 and 1988 (hereinafter referred to as "the Act"). Accordingly, the basic pension payable to the first respondent was fixed at Rs. 17,300/- per annum as per Ext.P1 dated September 8, 1986. The Union of India issued order dated April 16, 1987 (Ext.P-2) rationalising the pension structure of employees who retired before January 1, 1986. Ext.P-2 contains a table showing the revised rate of pension payable regarding the existing pensioners. ExtP-2 stated that separate orders would be issued by the respective administrative authorities with regard to the revised pension of retired High Court and Supreme Court Judges. Thus, the Union of India issued a notification dated December 18, 1987 which is as follows:

"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 Court/Supreme Court Judges (Conditions of Services) Act, 1954/1958, respectively, may be

revised with effect from January 1, 1986 as in the case of the employees of Central Government or from some other date, the respective State Government may 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 Higher Judicial Service"

The said letter goes on to say:

"This is subject to the condition that the total pension including additional pension admissible to such Judges under para 2 (a) and (b) of Part III of the First Schedule/Schedule to the High Court/ Supreme Court Judges (C/S) Act, 1954/1958, shall not exceed Rs. 48,000/p.a., Rs.54,000/-p.a. and Rs.60,00/-p.a. in the case of Judge, High Court Chief Justice, High Court, Judge, Supreme Court of India and the Chief Justice of India, respectively."

The above notification was the subject matter of a decision of the Supreme Court reported in M.L. Jain Vs. Union of India (UOI) and Others, The petitioner therein was appointed as a Judge of the Rajasthan High Court. Before his appointment he was a District Judge. He was transferred later to the High Court of Delhi and retired from that Court. He filed a writ petition before the Supreme Court claiming higher pension than was originally sanctioned. The Union of India in a letter addressed to all Accountant Generals directed to calculate the pension of retired High Court Judges who were serving in the Higher Judiciary of the State as follows:

"(ii) pay for the purpose for calculating pension under para 2(a) shall be the pay which a Judge had drawn or would have drawn in the scale of pay of the post held by him in his parent Department, preceding the date; on which he was elevated as a Judge of the High Court, including annual increments, if any, which he would have drawn up to the date of his superannuation as a Government servant. Further the pay which he would have drawn in the selection grade, if any, for which he would have been automatically eligible and not on the basis of any selection will also be taken into account. In case, he was holding a post on deputation (as distinct from "foreign service") the pay in such an ex-Cadre post will also be taken into account on the same lines as mentioned above."

In M.L. Jain and Another Vs. Union of India and Others, , the Supreme Court held that the above direction was a clear departure from para 2 Clause (a) of Schedule I of the Act. Therefore, the Supreme Court held that under Clause (a) of para 2 of Schedule I of the Act a retiring Judge's entire service as a Judge has to be reckoned for the purpose of calculating his pension and for the purpose the last pay drawn by him has to be the pay drawn by him as a Judge of High Court and not the pay that would have been drawn by him as a District Judge, had he not been appointed as High Court Judge. Relying on the principle the Supreme Court fixed the pension of Sri. M.L. Jain as Rs. 24,600/- p.a. Since there was a ceiling, the petitioner therein was only entitled to a pension of Rs. 21,500/-.

2. By Act 38 of 1986 Clause (b) of para 2 off Part III of the First Schedule of the

Act was amended. By the above amendment the special additional pension of Rs. 700/- was raised to Rs. 1,600/- and the ceiling of Rs. 3,500/- was raised to Rs. 8,000/- with effect from November 1, 1986. According to the proviso to Clause (b) the pension under Clause (a) and the additional pension under Clause (b) together was in no case to exceed Rs. 54,000/- per annum in the case of a Chief Justice and Rs. 48,000./ per annum in the case of any other Judge. In the second case of Sri M.L. Jain (supra) the Supreme Court frowned upon the stipulation in the letter dated December 18, 1987, to which reference has been made above, that the State Governments might decide to adopt these orders or an independent order issued by them to grant the benefit of increased pension on similar lines to their employees including members of higher judicial services. This direction was held to be offending Article 14 of the Constitution. Finally, the Supreme Court fixed the pension of Sri. M.L. Jain-

"Consolidation of pension as per O.M. dt. March 16, 1987

Amount per Annum

1.

Existing ordinary pension (1150x12)

Rs. 13800/-

2.

Part consolidated Ordinary pension as per Para 6.1 of O.M.dt.April 16,1987 (Additional relief as per para 41. A incase of per 31.3.85 retts)(Col. 2 of ready reckoner) (Rs. 2243x12)

Rs. 26,916

3.

Increase due to recalculation at 5 % of pay see 6 uunder Part A)

Rs. 2,304

4.

Total consolidated ordinary pension from 1.1.86(2 + 3)

Rs. 29,220

5.

Additional pension admissible from 1.1.86

Rs. 3,500

6.

Total pension admissible from 1.1.86(4 + 5)

Rs. 32,720

7.

Additional pension admissible from 1.11.86

Rs. 8,000

8.

Total pension admissible from 1.11.86(4 +7) limited to Rs. 48,000/54,000 wherever necessary

Rs. 37,220

In the Original Petition the petitioner claimed a consolidated basic pension at the rate of Rs. 47,168/- per annum with effect from January 1, 1986 to October 31, 1986 and Rs. 51,668/- p.a. from November 1, 1986 onwards subject to the ceiling of Rs. 48,000/- The method of calculation adopted by the petitioner in the Original Petition is as follows: As per Ext. P-1, the existing pension of the petitioner as on December 31, 1985 is Rs. 17,300/- p.a. This is equivalent to Rs. 1,442 per month. According to the table attached to Ext. P2 the revised pension of Rs. 1,442/- is Rs. 2,812/-. The petitioner in the Original Petition has converted the above amount into annual payment which comes to Rs. 47,168/-.

3. The learned Judge allowed the Original Petition and directed the respondents in the Original Petition to refix the petitioner's pension at Rs. 35,100/- p.a. from January 1, 1986 and at Rs. 47,900/- p.a. from November 1, 1986. The arrears of difference in the amount of pension were ordered to be paid within two months from the date of receipt of a copy of the judgment. The basis of the calculation made by the learned Judge is available in para 4 of the Judgment which is as follows:

"4. Para 2 of Part III of Schedule-I to the Act lays down the method of calculating the pension payable to a Judge, who held any pensionable post prior to his elevation as High Court Judge. As per that provision, such a Judge shall be entitled to the pension calculated under para 2 (a) and the special additional pension calculated in terms of the provisions contained in paragraph 2(b). The pension payable to the petitioner under paragraph 2(a) is Rs. 1,342 per month. To this, the amount coming under paragraph 2(b) should also be added. The amount due to the petitioner under para 2(b) is Rs. 700 x 8, the number of years of service rendered by him as Judge of the High Court. But, this is subject to the maximum fixed therein, namely Rs. 3,500/- per annum. Rs. 3,500/-per annum is equal to Rs. 292/- per month. So, the total pension payable to the petitioner per month is Rs. 1,634/-. This is so because the total admissible pension of a High Court Judge, who held any pensionable post prior to his elevation, should be as provided under para 2(a) and para 2(b) of Part III of the First Schedule to the Act. This exceeds the maximum pension payable to a Government servant. So, it has to be limited to Rs. 1,500/-per month, the maximum amount payable as

pension to the pensioner."

In the appeal the Union of India challenges the above judgment of the learned Judge. The Additional Central Government Standing Counsel assailed the reasoning of the learned Single Judge on the ground that under the scheme of the Act the pension under para 2(a) and para 2(b) of Part III of the 1 Schedule of the Act has to be worked out separately. These are two separate types of pensions and should not have been clubbed together for purpose of revision. It was further submitted by learned Additional Central Government Standing Counsel that what was revised as per Ext.P-2 is only the amount of pension covered by para 2(a).

4. The I Schedule of the Act deals with the pension of Judges Part III of the I Schedule deals with the pension of the High Court Judges who were elevated from the State Judicial Services. Clauses (a) and (b) of para 2 of Part III of the I Schedule of the Act read as follows:

"(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and

(b) a special additional pension of Rs. 1,600/- per annum in respect of each completed year of service for pension, but in no case such additional pension together with the additional or special pension, if any, to which he is entitled under the ordinary rule of his service shall exceed Rs 8,000/- per annum.

Provided that the pension under Clause (a) and additional pension under Clause (b) together shall in no case exceed Rs. 54,000/- per annum in the case of a Chief Justice and Rs. 48,000/- per annum in case of any other Judge."

Clause (a) deals with the pension to which a Judge is entitled under the ordinary rules of his service if he had not been appointed as a Judge, For the above purpose, the service as a Judge is treated as service for the purpose of calculating that pension. In the first case of Sri. M.L. Jain. (supra) the Supreme Court took the view that for calculating the pension of a Judge who was a member of the State Judicial Services, the last pay drawn by him as a Judge of the High Court must be taken into consideration.

5. Clause (b) refers to a special additional pension per annum in respect of each completed year of service to be paid to the retired High Court Judge. As far as this amount is concerned, there is no revision as per Ext. P.2

6. What the petitioner in the Original Petition contended, which is accepted by the learned Single Judge, is that the two amounts covered by Clauses (a) and (b) must be put together and thereafter its equivalent revised rate must be found out from the table attached to Ext.P2. In Ext.P2, it has been specifically stated that separate orders would be issued with regard to revised pension of Judges. Thereafter, orders were issued on December 18, 1987. According to the above order, the ordinary pension admissible to the High Court Judges under para 2 of

Part III of the I Schedule to the Act may be revised with effect from January 1, 1986 as in the case of the employees of the Central Government. The above order also states that the revision of pension is subject to the condition that the total pension including additional pension admissible to Judges under Para 2(a) and (b) of Part III of the First Schedule of the Act shall not exceed Rs. 48,000/- per annum, Rs. 54,000/- p.a. and Rs. 60,000/ p.a. in the case of a Judge of the High Court, Chief Justice of High Court/Judge of the Supreme Court of India and the Chief Justice of India respectively. Thus, it can be seen that what is revised under Ext. P2 is the ordinary pension admissible to the High Court Judges under para 2(a). What is payable under para 2(b) is a special additional pension. Both these pensions have different character. Under Clause (a) of para 2 a retired Judge is entitled to the pension to which he is entitled under the ordinary rules of his service. But under Clause (b) he is entitled to a special additional pension which is a fixed amount. The Schedule is a part of the Act passed by the Parliament. The Parliament alone can amend the above schedule. Before the amendment of 1986, the special additional pension was Rs. 700/- and by the Amending Act 38 of 1986 it was raised to Rs. 1,600/-. The ceiling of Rs. 3,500/- was also raised to Rs. 8,000/-. Therefore, Clause (b) cannot be subject to any revision by means of an executive order. The ordinary pension payable to a retired High Court Judge who was an officer of the State Judicial service alone can be the subject matter of the order revising the pension . The special additional pension mentioned in Clause (b) of para 2 of Part III cannot be revised by an order like Ext. P2.

7. In the counter affidavit filed by the Union of India and by the State Government it has been clearly explained that the pension of the petitioner in the Original Petition was revised strictly following the principles laid down by the Supreme Court in the three cases filed by Sri M.L. Jain, referred to above. In order to show that no deviation was made in the case of the petitioner in the Original Petition from that of Sri. M.L. Jain a comparative table has been produced along with the counter affidavit filed by the second respondent. The petitioner in the Original Petition was having 23 years of service and the pay reckoned for this pension is Rs. 3,500/-. His existing ordinary pension was Rs. 1,150/- per mensem. Applying 50% formula as per Ext.P2 his pension was revised as Rs. 1,342/- per mensem. The corresponding revised pension of Rs. 1,150/- is Rs. 2,243/-. Therefore, the petitioner in the Original Petition was entitled to Rs. 26,916/- as revised pension. The increase due to revised pay was Rs. 192/-per mensem. Thus, the petitioner was entitled to a total consolidated ordinary pension of Rs. 29,220/-. To the above amount, the additional pension admissible from January 1, 1986 (Rs. 3,000/) has to be added. Thus, an amount of Rs. 32,720/- was arrived at. To the above amount, the special additional pension of Rs. 8,000/ was added. Thus, the total amount of pension to which the petitioner in the Original Petition is entitled to is Rs. 37,220. In the second case of Sri. M.L.Jain (supra) the Supreme Court, refixed the pension of Sri Jain as Rs. 46, 100/-p.a. with effect from November 1, 1986. The annexure to the counter

affidavit filed by the second respondent will go to show that the above figure was arrived at by the same method of calculation as that was done in the case of the petitioner. The amount due to Sri. M.L.Jain was fixed at Rs. 48,000/- p.a. in the 3rd case filed by M.L. Jain Vs. Union of India, by holding that the ceiling of Rs. 8,000/- was not necessary when a ceiling of Rs 48,000/was fixed.

8. Therefore, we are of the opinion the pension calculated by the Union of India under Exts. P4, P5 and P5 (a) is quite correct. The method adopted by the learned Single Judge by adding the figures under Clauses (a) and (b) of para 2 of Part III of the I Schedule of the Act in order to find out the amount of revised pension as per Ext.P2 is not legally permissible. Therefore, the appeal is allowed and the judgment of the learned Single Judge is set aside.

9. Sri. Govind K. Bharathan, learned counsel for the first respondent submitted that in compliance with the judgment of the learned Single Judge the amounts as recalculated were actually paid to the first respondent and the first respondent has also paid the income tax on the above amount. Under these circumstances, we direct that the first respondent is not liable to refund any amount which he received pursuant to the judgment of the Learned Single Judge.

The appeal is allowed.