

Union of India

Vs

P. M. Jayarajan

Civil Appeal No. 219 of 1974

(M. H. Beg, R. S. Sarkaria, P. N. Shinghal JJ)

03.12.1975

JUDGMENT

RAY, C. J. -

1. This appeal is by special leave from the judgment dated March 3, 1972 of the High Court of Madras.
2. The respondent in an application under Article 226 of the Constitution asked for a writ of mandamus directing the appellant Union to pay the respondent pension at the rate of 1st, 9d per rupee in accordance with Regulations 934-A and 934-D of the Civil Service Regulations.
3. The respondent is a Ceylonese national. He joined the Indian Civil Service on October 6, 1933. After August 15, 1947 he continued to serve in our country until his retirement on December 31, 1949.
4. At his retirement he was sanctioned an annuity of dollar 743-2 shillings 6 pence per annum. He commuted a part of his pension leaving a balance of Rs. 500 per month.
5. Between March, 1968 and October, 1969 he resided in Uganda in East Africa. When the respondent was in Uganda he claimed pension at the rate of 1sh. 9d to a rupee. His request was accepted by the Accountant General, Madras. The Union Government reversed the decision and directed that the conversion rate should be 1sh. 6d to a rupee and the excess payment should be recovered from the respondent. The respondent thereafter made an application under Article 226 of the Constitution.
6. The High Court accepted the petition of the respondent on the ground that the respondent shifted his residence from Ceylon to Uganda and was, therefore, entitled to benefit under the second proviso to Article 934 as follows :  
  
Provided that save where a pensioner resides in India (which for the purpose of this Article and Articles 934-A, 934-B, 934-C, 934-D and 935 shall be deemed to include Burma, Ceylon, Nepal, and the French and Portuguese establishments in India) the minimum rate of conversion shall be 1/9 per rupee
7. The question of payment of pension to member of the Indian Civil Service in sterling was examined by this Court in V. B. Raju v. State of Gujarat ((1975) 1 SCR 797 : (1975) 3 SCC 171 : 1974 SCC (L. & S) 523). The Constitution (Twenty-eighth Amendment) Act, 1972 introduced

Article 312-A. Article 312-A confers power on Parliament to make law, inter alia, to vary revoke prospectively or retrospectively the conditions of service as respects pension of persons who having been appointed by Secretary of State or Secretary of State in Council to a civil service of the Crown in India before the commencement of the Constitution retired or otherwise ceased to be in service at any time before the commencement of the Constitution (28th Amendment) Act, 1972. The Constitution (28th Amendment) Act, 1972 came into existence on August 27, 1972.

8. Parliament on September 21, 1972 made the law called the Former Secretary of State Service Officers (Conditions of Service) Act, 1972. A former Secretary of State Officer means a person referred to in sub-clause (a) or sub-clause (b) of clause (1) of Article 312-A of the Constitution. The respondent is a former Secretary of State Service Officer within the meaning of sub-clause (a) of clause (1) of Article 312-A. Section 8(1) of the Constitution of Service Act, 1972 enacts that no former Secretary of State Service Officer shall be entitled or be deemed to have been entitled to claim (a) pension in sterling; or (b) that this pension shall be paid outside India; or (c) where his pension was expressed in sterling or a fixed sterling minimum was applicable in respect of the pension payable to him, that his pension shall be computed in the rupee equivalent of the amount fixed in sterling at a rate of exchange exceeding the rate of rupees thirteen and one-third to the pound sterling.

9. Section 12 of the Former Secretary of State Service Officers (Conditions of Service) Act, 1972 states that the provisions of this Act or of any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than this Act or in any rule, regulation or order or other instrument having effect by virtue of any law other than the 1972 Act.

10. The Constitution Bench of this Court in V. B. Raju's case (supra) held that the former members of the Indian Civil Service as a result of the Conditions of Service Act, 1972 are not entitled to claim payment of pension in sterling or outside India or by converting dollar 1,000 at the rate of exchange exceeding the rate of exchange of rupees thirteen and one third to the pound sterling.

11. The judgment of the High Court cannot be sustained by reason of change in law. The appeal is accepted and the judgment of the High Court is set aside. Parties will pay and bear their own costs.

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