

Union of India

Vs

V. B. Raju

Civil Appeal No. 2151 of 1972

(O. Chinnappa Reddy, R. B. Misra JJ)

29.03.1982

JUDGMENT

CHINNAPPA REDDY, J. -

1. The respondent Shri V.B. Raju, was a member of the Indian Civil Service and was a Judge first of the Bombay High Court and later of the Gujarat High Court. He was a Judge from June 12, 1959 to February 10, 1969 on which date he retired, He filed a writ petition in the Gujarat High Court claiming that he was entitled to be paid a pension of pounds 1000 sterling in addition to the additional pension payable under Part II of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954. Following an earlier judgment of the same court in J.D. Kapadia v. Union of India ((1971) 12 Guj LR 938), the Gujarat High Court allowed the writ petition and declared that the amount payable under Clause 2(a) of Part II of the First Schedule of the High Court Judges (Conditions of Service) Act, 1954, was pounds 1000 sterling according to the official rate of exchange prevailing on the date when payment became due instead of the fixed sum of Rs 13,333.33 per annum. The Union of India has filed this appeal against the decision of the Gujarat High Court. The earlier judgment of the Gujarat High Court in J.D. Kapadia v. Union of India ((1971) 12 Guj LR 938) was reversed by this Court in V.B. Raju v. State of Gujarat (AIR 1974 SC 2055 : (1975) 3 SCC 171 : 1974 SCC (L & S) 523 : (1975) 1 SCR 797 : 1974 Lab IC 1362). In view of the judgment of this Court in V.B. Raju v. State of Gujarat (AIR 1974 SC 2055 : (1975) 3 SCC 171 : 1974 SCC (L & S) 523 : (1975) 1 SCR 797 : 1974 Lab IC 1362), this appeal has to be allowed. It was however, argued by Shri V.B. Raju, in the case now before us, that in the earlier judgment of the Supreme Court there was no reference to the High Court Judges (Conditions of Service) Act, 1954. According to Shri Raju Section 15 of the Act provided that every Judge who was a member of the Indian Civil Service shall, on his retirement, be paid a pension in accordance with the scale and the provisions in Part II of the First Schedule.. Part II of the First Schedule provided that the pension which a Judge who was a member of the Indian Civil Service was entitled to receive was the pension to which he was entitled under the ordinary rules of the Indian Civil Service if he had not been appointed a Judge and the additional pension in accordance with the prescribed scale. Shri Raju would say that under the ordinary rules of the Indian Civil Service he was entitled to a pension of pounds 1000 sterling and not Rs 13,333.33. Under Regulation 561 of the Civil Service Regulations as it stood before June 12, 1956 a member of the Indian Civil Service was entitled to receive a pension of pounds 1000 sterling. Regulation 561 was amended on June 12, 1956 and instead of an annuity of pounds 1000 sterling an annuity of Rs 13,333.33 was substituted. Shri Raju argued that Regulation 561 as it stood before it was amended in 1956 was incorporated by reference in the High Court Judges (Conditions of Service) Act, 1954, and therefore, he was entitled to be paid pounds 1000 sterling and not Rs 13,333.33. We see no force whatever in the submission. There is no such incorporation, by reference, of Regulation 561 in Part II of the First Schedule as it

stood before the amendment in the High Court Judges (Conditions of Service) Act, 1954. All that Part II stipulates is that the pension which a High Court Judge who was a member of the Indian Civil Service was entitled to receive was the pension payable under the ordinary rules of the Indian Civil Service if he had not been appointed a Judge. If he had not been appointed a Judge he would have been entitled to a pension of Rs 13,333.33 and not pounds 1000 sterling. That is, therefore, what he is entitled to get, of course, in addition to the additional pension.

2. Shri Raju raised a preliminary objection that in view of Article 312-A(3) of the Constitution which came into force w.e.f. August 29, 1972 the present appeal by the Union of India was not maintainable. We see no force in the submission. The action out of which the appeal arises was instituted prior to August 29, 1972 and the Union of India had a vested right of appeal (vide *Garikapatti Veeraya v. N. Subbiah Choudhury* (1957 SCR 488 : AIR 1957 SC 540 : 1957 SCJ 439)). The appeal is therefore allowed, and the writ petition in the High Court is dismissed.

3. There will be no order as to costs.

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