

Union of India

Vs

Gurnam Singh

Special Leave Petition No. 416 of 1981

(R. S. Pathak, E. S. Venkataramiah JJ)

03.05.1982

ORDER

PATHAK, J. -

1. This petition for special leave to appeal by the Union of India is directed against the judgment and order of the High Court of Punjab & Haryana holding the respondent, a retired Judge of the High Court, entitled to the payment of the cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his retirement.

2. The respondent, Shri Gurnam Singh, was a member of the Superior Judicial Service in the State of Haryana. On February 24, 1972 he was appointed a Judge of the High Court of Punjab & Haryana and retired on March 18, 1980 on attaining the age of 62 years. On the date of retirement the respondent had to his credit earned leave which had not been availed of by him. He claimed that he was entitled to receive the cash equivalent of leave salary in respect of the period of unutilised earned leave. He also claimed dearness allowance for the period before retirement. The claim being denied, the respondent applied to the High Court of Punjab & Haryana for relief under Article 226 of the Constitution. The writ petition was allowed by the High Court by its judgment and order dated September 5, 1980 and a direction was issued to the Union of India to pay the amount claimed. During the course of the hearing the Union of India conceded the claim the dearness allowance in view of the order dated July 3, 1980 of the Government that the Judges of the High Court were entitled to draw dearness allowance from December 1, 1979. As to the remaining claim, the High Court held the respondent entitled to the cash equivalent of the leave salary for the period of unutilised earned leave by giving him the benefit of Rule 20-B, All India Services (Leave) Rules, 1955 by virtue of Rule 2 of the High Court Judges Rules, 1956. The order of the High Court is assailed before us.

3. In our opinion, the High Court is plainly right. Article 221 of the Constitution provides for payment of salaries and allowances to a Judge of a High Court. Clause (2) of Article 221 declares:

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:

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The rights in respect of leave of absence to which a Judge is entitled may be determined by or under law made by Parliament. Parliament enacted the High Court Judges (Conditions of Service) Act,

1954, and Sections 3 to 13 of that Act classify the kinds of leave admissible to a Judge, and provide for the maintenance of a leave account, the aggregate amount of leave which may be granted, the commutation of leave on half allowance into leave on full allowance, the grant of leave not due, special disability leave, extraordinary leave, the rate of leave allowances, allowance for joining time, for combining leave with vacation and the consequences of overstaying leave or vacation. It also specifies the authority competent to grant leave. The Union of India says that these several provisions constitute a complete code and exhaustively set forth all the benefits relating to leave to which a Judge of a High Court is entitled, and that it is not permissible to proceed beyond those provisions to discover any further right in favour of a Judge. That submission is inadmissible. Sub-section (1) of Section 24 of the same Act empowers of Central Government to make rules to carry out the purpose of the Act. And clause (a) of sub-section (2) of Section 24 specifically contemplates rules providing for "leave of absence of a Judge". In other words, it is open to the Central Government to add to the existing statutory provisions by making rules in relation to leave of absence. Sub-section (2) of Section 24 in fact enables the Central Government to make rules in respect of several other matters, such as the pension payable to a Judge, travelling allowances, use of official residence, facilities for medical treatment and other conditions of service and "any other matter which has to be, or may be prescribed". Now the Government of India enacted the High Court Judges Rules, 1956 and Rule 2 comprehensively declares :

2. The conditions of services of a Judge of a High Court for which no express provision has been made in the High Court Judges (Conditions of Service) Act, 1954, shall be, and shall from the commencement of the Constitution be deemed to have been, determined by the rules for the time being applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated :

Provided that, in the case of a Judge of the High Court of Delhi and a Judge of the High Court of Punjab & Haryana the conditions of service shall be determined by the rules for the time being applicable to a member of the Indian Administrative Service on deputation to the Government of India holding the rank of Joint Secretary to the Government of India stationed at New Delhi :

Provided further that, in respect of facilities for medical treatment and accommodation in hospitals the provisions of the All India Service (Medical Attendance) Rules, 1954, in their application to a Judge, shall be deemed to have taken effect from January 26, 1950 :

Provided also that where at the request of the President, any Judge undertakes to discharge any function outside his normal duties in any locality away from his headquarters, the President may, having regard to the nature of such function and locality, determine the facilities that may be afforded to such Judge including accommodation, transport and telephone so long as he continues to discharge such function, either without any payment or at a concessional rate.

4. Rule 2-A sets forth the rights of a Judge who avails of an official residence and Rule 2-B provides the scale of its free furnishing.

5. It is clear from Rule 2 of the High Court Judges Rules, 1956 that the conditions of service of a Judge of the High Court of Punjab & Haryana, where not expressly provided in the High Court Judges (Conditions of Service) Act, 1954 must be determined by the rules governing a member of the Indian Administrative Service of the rank of Joint Secretary to the Government of India

stationed at New Delhi.

6. The All India Services (Leave) Rules, 1955 contain provision for leave in relation to members of the All India Services, including the Indian Administrative Service. On the date when the respondent retired those rules included Rule 20-B which provides :

20-B. Payment of cash equivalent of leave salary.- (1) The Government shall suo motu sanction to a member of the service who retires from the service under sub-rule (1) of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, having attained the age of 58 years on or after September 30, 1977 the cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his retirement, subject to a maximum of 180 days.

(2) The cash equivalent of leave salary payable to a member of the service under sub-rule (1) above shall also include dearness allowance admissible to him on the leave salary at the rates in force on the date of retirement, and it shall be paid in one lump-sum, as a one-time settlement.

(3) The city compensatory allowance and the house rent allowance shall not be included in calculating the cash equivalent of leave salary under this rule.

From the cash equivalent so worked out no deduction shall be made on account of pension and pensionary equivalent of other retirement benefits.

7. It is not disputed that Rule 20-B applies to a member of the Indian Administrative Service of the rank of Joint Secretary to the Government of India stationed at New Delhi. The rule entitles him on retirement from service to the cash equivalent of leave salary in respect of the period of unutilised earned leave subject to a maximum of 180 days, inclusive of dearness allowance. It is apparent that by virtue of Rule 2 of the High Court Judges Rules, 1956 this benefit must be read as a condition of service enjoyed by a Judge of the High Court. It may be observed that although Rule 20-B of the All India Services (Leave) Rules, 1955 is a provision of a scheme applicable to members of the All India Services, there is nothing in its nature and content which makes it inapplicable mutatis mutandis to the statutory scheme pertaining to leave enacted in the High Court Judges (Conditions of Service) Act, 1954. There is also nothing in the constitutional position of a Judge of a High Court which precludes Rule 20-B from inclusion in that scheme. It is true that Rule 20-B revolves around the concept of earned leave, and the expression 'earned leave' has been specifically defined by clause (b) of Rule 2 of the All India Services (Leave) Rules, 1955 as "leave earned under Rule 10". But Rule 10 merely lays down the rate and amount of earned leave. The principle in which 'earned leave' is rooted must be discovered from Rule 4, which provides that "except as otherwise provided in these rules leave shall be earned by duty only". The performance of duty is the basis of earning leave. That concept is also embedded in the High Court Judges (Conditions of Service) Act, 1954. Under that Act, the time spent by a judge on duty constitutes the primary ingredient in the concept of 'actual service' (Clause (c), sub-section (1) of Section 2), which is the reason for crediting leave in the leave account of a Judge (Section 4). Although the expression 'earned leave' is not employed in the Act, the fundamental premise for the grant of leave to a Judge is that he has earned it. He has earned it by virtue of the time spent by him on actual service. That a Judge earns the leave which is credited to his leave account is borne out by the proviso to Section 6 of the Act, which declares that the grant under Section 6 of leave not due will not be made "if the Judge is not expected to return to duty at the end of such leave and earn the leave granted". The concept then on which Rule 20-B

proceeds is familiar to and underlies the statutory scheme relating to leave formulated in the Act. It bears a logical and reasonable relationship to the essential content of that scheme. On that, it must be regarded as a provision absorbed by Rule 2 of the High Court Judges Rules, 1956 into the statutory structure defining the conditions of service of a Judge of a High Court. We may observe that even as a right to receive pension, although accruing on retirement, is a condition of service, so also the right to the payment of the cash equivalent of leave salary for the period of unutilised leave accruing on the date of retirement must be considered as a condition of service.

8. In our judgment, the High Court is right in upholding the claim of the respondent to the payment of the cash equivalent of the leave salary in respect of the period of earned leave at his credit on the date of retirement in accordance with the provisions of Rule 20-B of the All India Services (Leave) Rules, 1955 read with Rule 2 of the High Court Judges Rules, 1956.

9. The special leave petition is dismissed.

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