

Shiv Dayal Shrivastava

Vs

Union of India

Writ Petition No. 8991 of 1983

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

07.02.1984

JUDGMENT

RANGANATH MISRA, J. -

1. Shri Shiv Dayal Shrivastava, the petitioner before us in this application under Article 32 of the Constitution praying for a writ of mandamus to the Union of India, retired as Chief Justice of the Madhya Pradesh High Court with effect from February, 28, 1978. At the time of retirement he was drawing a salary of Rs. 4,000 per month as provided under the Constitution. This Court in the case of Union of India v. Gurnam Singh ((1982) 3 SCR 700 : (1982) 2 SCC 314 : 1982 SCC (L&S) 236 : AIR 1982 SC 1265), decided that under the High Court Judges (Conditions of Service) Act, 1954 ('Act' for short), Judges were entitled to cash equivalent of leave salary in respect of the period of earned leave at their credit on the date of retirement as provided in rule 20-B of the All-India Services (Leave) Rules, 1955 ('Leave Rules' for short) The Accountant-General of Madhya Pradesh authorised the petitioner to draw cash equivalent of leave salary amounting to Rs. 15,240 by his communication dated July 17, 1982. The petitioner informed the Accountant-General that he was drawing the amount as indicated in the communication without prejudice to his right to claim Rs. 24,000 to which sum under the law he was entitled. On July 19, 1982, the petitioner was authorised to draw a further sum of Rs. 750; thus in all Rs. 15,990 only. On February 2, 1983, the Union of India in the Ministry of Law, justice and Company Affairs indicated to the several authorities including the Registrars of all the High Courts that while in view of the decision of this Court referred to above, the Central Government were advised that Judges of the High Courts were entitled to payment of cash equivalent of leave salary in respect of the period of earned leave at their credit, the expression 'earned leave' does not occur in the Act. On the analogy of the Leave Rules the cash equivalent of leave salary to be paid would be the cash equivalent of the unutilised leave due on full allowances as defined in Sections 3 and 9(1) of the Act. In making calculations of the cash equivalent of the leave salary the ceiling of five months mentioned in Section 5(3) of the Act would be applicable. Relying on the aforesaid letter of the Central Government, the Accountant-General of Madhya Pradesh on March 25, 1983, intimated the petitioner that he was entitled to payment of cash equivalent of unutilised earned leave subject to the ceiling of five months' leave and, therefore, he had been paid an excess sum of Rs. 2,220 which should be refunded. That has led the petitioner to move this Court.

2. Rule nisi was issued to the Union of India and this Court directed separate notice to the Attorney-General. A return has been made to the rule by the Union of India. No dispute has been raised to payability of the cash equivalent on the basis of Rule 20-B of the Leave Rules. Reliance has been placed on the provisions of the Act to justify the circular letter of February 18, 1983. learned Attorney-General has been heard and he has furnished written submissions also.

3. The decision of this Court in Gurnam Singh case ((1982) 3 SCR 700 : (1982) 2 SCC 314 : 1982 SCC (L&S) 236 : AIR 1982 SC 1265) has been accepted by the union of India and steps have been taken to employment the same. In that case this Court held : (SCC p. 318, para 7)

..... 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.

4. Two questions require decision, viz., (1) whether in view of the provisions of Section 5(3) of the Act, the limit has to be confined to five months equal to 150 days and not 180 days as in Rule 20-B; and (2) whether for calculating the equivalent leave of salary admissible to a Judge the provisions of Section 9(1) of the Act would apply ?

5. We may now refer to Rule 20-B of the Leave Rules as also to the two provisions of the Act :

20-B. payment of cash equivalent of leave salary - The Government shall suo motu sanction to a member of the service who retired 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 this credit on the date of his retirement, subject to a maximum of 180 days.

Section 5(3) of the Act reads :

5(3). Subject to the provisions of sub-section (2) of Section 5-A, the maximum period of leave which may be granted at one time shall be, in the case of leave on full allowances, five months and in the case of leave with allowances of any kind, sixteen months.

Section 9(1) provides:

9(1). The monthly rate of leave allowances payable to a Judge while on leave on full allowances shall be for the first forty-five days of such leave, a rate equal to the monthly rate of his salary, and thereafter two thousand two hundred and twenty rupees :

provided that where leave on fully allowances is granted to a Judge on medical certificate, the monthly rate of leave allowances shall, for the first one hundred and twenty days of such leave, be a rate equal to the monthly rate of his salary.

6. Chapter II of the Act deals with leave. Section 3 provides the kinds of leave admissible to a Judge. Section 4 makes provision for a leave account to be maintained. Section 5 deals with aggregate amount of leave which may be granted. Section 5-A makes provision for commutation of leave on half allowances into leave on full allowances while Sections 6, 7 and 8 deal with grant of leave of specific kinds. These provisions in the Act deal with leave which has to be asked for and taken during the tenure of working as a Judge. Leave necessarily implies authorised absence from duty or employment (see Webster's Third New international Dictionary) Rule 20-B makes provision

for payment of cash equivalent of leave due under the appropriate provisions but subject to a maximum of 180 days. We have already indicated that the ratio of Gurnam Singh case ((1982) 3 SCR 700 : (1982) 2 SCC 314 : 1982 SCC (L&S) 236 : AIR 1982 SC 1265) has not been disputed. It would necessarily mean acceptance of the position that the Act did not make provision for payment of the retirement benefit contemplated under Rule 20-B; otherwise Rule 20-B could not have been applied. The scheme in Rule 20-B is that the payment would be made suo motu and without any application for it. Leave referred to under the Act is one which has to be asked for and is intended to meet a different situation. For calculating the benefits under Rule 20-B, Section 5(3) of the Act is not relevant and in case in the leave account maintained under Section 4 of the Act leave is due, the benefit under Rule 20-B has to be worked out subject to the upper limit of 180 days, equal to six months. The claim made by the petitioner that he was entitled to the benefit of six months is, therefore, justified subject, of course, to admissibility of leave to the extent of 180 days in the leave account. No dispute was raised before us that as a fact petitioner had to his credit more than 180 days of leave.

7. Once we hold that the benefit under Rule 20-B is not controlled by Chapter II of the Act, of the Act, the manner of calculation indicated in Section 9(1) of the Act would also not apply. The petitioner would thus become entitled to cash equivalent of six months' salary which would work out at Rs. 24,000. As he has been paid a sum of Rs. 15,990, he is entitled to Rs. 8,010. A writ in the nature of mandamus be issued to the Union of India to pay him the said amount within one month from today. Parties are left to bear their won costs before us.

8. We could like to add that it is manifest that in view of the enunciation of law by us in judgment, the principles governing the cash equivalent of leave would apply not only to the petitioner but also to judges who have already retired or who may retire hereafter, from the date from which this Facility was made available to the members of the Central Services holding the rank of Secretary to the Government of India or its equivalent.

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