

M. L. Jain and Another

Vs

Union of India

Writ Petitions Nos. 16093 of 1984 and 13245 of 1983

(O. Chinnappa Reddy, A. N. Sen, E. S. Venkataramiah JJ)

08.04.1985

JUDGMENT

O. CHINNAPPA REDDY, J. -

1. On November 20, 1984 this writ petition was heard along with Writ Petition No. 13243 of 1983 (Shri J. P. Chaturvedi v. Union of India). Shri J. P. Chaturvedi's petition was allowed, by consent of the learned Attorney-General who appeared for the Union of India. Shri M. L. Jain's petition was allowed on the same lines under the impression that the facts involved were the same. It has now been brought to our notice by the Registry that there is considerable difference in the prayers in the two cases. We have, therefore, recalled our earlier order in Shri M. L. Jain's case and examined his case afresh.

2. Shri M. L. Jain was a member of the Rajasthan Judiciary from September 31, 1945 onwards till July 1, 1975 during which period he was a District and Sessions Judge, from November 9, 1970 to July 1, 1975. Thereafter he was elevated as a Judge of the High Court on July 1, 1975. He retired as a Judge of the High Court on July 21, 1984. Had he not been appointed a Judge of the High Court, he would have retired as District and Sessions Judge, on July 31, 1977. His total period of service as a Judicial Officer, otherwise than as a Judge of the High Court was 29 years, 9 months and one day while his service as a Judge of the High Court was a period of 9 years and 21 days.

3. When he was appointed a Judge of the High Court he appears to have opted, for the purpose of his pension, for Part III of the First Schedule to the High Court Judges' (Conditions of Service) Act, 1954. Paragraph two of Part III of the First Schedule is as follows :

The pension payable to such Judge shall be - (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 Judge being treated as service therein for the purpose of calculating that pension; and (b) a special additional pension of Rs. 700 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 rules of his service, shall exceed Rs. 3500 per annum.

According to the calculation made by the respondent, Shri M. L. Jain was entitled to a pension of Rs. 15,320 per annum only. This figure was arrived at on the basis that had he continued as a District and Sessions Judge he would have retired on July 31, 1977 and his average monthly emoluments during the period, October 1, 1976 to July 31, 1977, would be Rs. 2500 per month as that was the pay he would have drawn as a District Judge had he continued as a District Judge and

retired on July 31, 1977. On that basis his pension was calculated at Rs. 11,820 per annum under clause (a) of para 2 of the First Schedule read with the Rajasthan Rules and to that figure was added the additional pension of Rs. 3500 per year under clause (b) of para 2 of Schedule I. His total pension was thus determined at Rs. 15,320 per annum.

4. The calculation made under clause (a) of paragraph 2 of the First Schedule was apparently done pursuant to the letter dated September 19, 1984 from the Ministry of Law, Justice and Company Affairs addressed to all Accountants-General. Paragraph 2 of the letter is as follows :

The question as to what should be taken into account for calculation of pension in terms of para 2(a) mentioned above, has been examined. After careful consideration of the matter, it has been decided that ...

(i) The service as Judge of the High Court will count towards qualifying service for pension in his parent service or post.

(ii) pay of 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 upto 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.

(iii) Special additional pension under para 2(b) will be calculated as provided in the High Court Judges' (Conditions of Service) Act, 1954.

We are of the opinion that para 2(ii) of the letter dated September 19, 1984 is a clear departure from para 2 clause (a) of Schedule I to the High Courts Judges' (Conditions of Service) Act. Under clause (a) of para 2 of the Schedule I to the High Court Judges' (Conditions of Service) Act, retiring Judge's entire service as a Judge has to be reckoned for the purpose of calculating his pension and for that purpose the last pay drawn by him has to be the pay drawn by him as a Judge of the High Court and not the pay that would have been drawn by him as a District Judge, had he not been appointed a High Court Judge. Under the Rajasthan Rules, his monthly pension was to be calculated in the following manner :

Up to the first Rs. 1000 of emoluments, the monthly pension would be 50% of the emoluments;

For the next Rs. 500 of the emoluments, the pension would be 45% of the emoluments;

For the balance of the emoluments, the pension would be 40% of the emoluments.

The amount of pension was to be arrived at on the basis of these slabs, related to the maximum qualifying service of 33 years. There was however a ceiling on the pension and it was prescribed that the maximum amount of pension should not exceed Rs. 1500 per month. As Shri M. L. Jain had

put in a total service of more than 38 years and 9 months including his service as a High Court Judge and his last pay drawn was Rs. 3500 per month, his pension would be Rs. 1525 per month. But since the Rajasthan Rules prescribed a ceiling of Rs. 1500 per month, he was entitled to a pension of Rs. 1500 per month only under clause (a) of para 2 of Schedule III. To this, the additional pension to be added under clause (b) was Rs. 700 x 9 = Rs. 6300, but here again the ceiling has been prescribed as Rs. 3500 per annum. Thus the additional pension under clause (b) would be Rs. 3500 per annum only bringing the total pension of Shri M. L. Jain to Rs. 21,500 per annum. But for the ceiling prescribed under the Rajasthan Rules and clause (b) of para 2 of the Schedule I to the High Court Judges' (Conditions of Service) Act, Shri M. L. Jain would have been entitled to a pension of Rs. 24,600 per annum, which is meagre enough considering his long and distinguished service as a Judicial Officer and High Court Judge for a period of 38 years and 9 months. But even this he is not entitled to be paid under the rules because of the respective ceilings and he is only entitled to a pension of Rs. 21,500 per annum. We find that in the recent budget proposals, the ceiling on the pension of civil servants is to be lifted. We hope the situation will be remedied in the case of Judges also and the ceiling lifted as early as possible. We may suggest that this may be done straight away by including suitable provisions in the Bill now announced to be pending before the Parliament. This will, of course, be quite apart from the other change for the improvement of the Conditions of Service of Judges in the matter of salaries, allowances, etc. which changes also brook no further delay if justice is to be done to the Judges. The petition is allowed in terms of what we have stated. Letter No. 6/4/84-Jus, dated August 30, 1984 from the Government of India, Ministry of Law, Justice and Company Affairs to the Chief Secretary, Delhi Administration, Delhi is quashed and the pension of the petitioner is refixed at Rs. 21,500 per annum.

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