

Shiveshwar Prasad Sinha

Vs

Union of India and Others

Writ Petition No. 1015 of 1984

(Ranganath Misra, A. N. Sen JJ)

16.09.1985

### JUDGMENT

1. The petitioner was a sitting Judge of the Patna High Court when he became the Chairman of the Andhra Pradesh Administrative Tribunal at Hyderabad. He attained the age of 62 on February 1, 1980 and ceased to be a Judge of the High Court but continued to be the Chairman of the said Tribunal until November 30, 1981, when on grounds of health, he resigned. Under the High Court Judges (Conditions of Service) Act, 1954, as amended in 1976, the petitioner was found entitled to gratuity of Rs. 18,666.67 and after adjusting certain loans to be recovered, he was actually paid a sum of Rs. 7302.02 as retirement gratuity, calculated on the basis of Section 17-A(3)(i) of the said Act. On December 14, 1978, the Government of India in the Ministry of Home Affairs laid down the terms and conditions of service of the Chairman and the members of the Andhra Pradesh Administrative Tribunal. Annexure B to the counter-affidavit filed in this Court indicates those terms so far as the Chairman is concerned. The prescription therein was to the following effect :

In partial modifications of the terms and conditions of service of the Chairman and Members of the Andhra Pradesh Administrative Tribunal as contained in para 2 of this Ministry's letter ... dated July 6, 1976 the Central Government hereby determine under para 3(6) of the Andhra Pradesh Administrative Tribunal, 1976 the following terms and conditions of service for the Chairman and Members of the Tribunal as from August 3, 1978 :

Chairman - The same remuneration/allowances and conditions of service as admissible to a High Court Judge provided that on retirement as a Judge, the pay plus pension and pension equivalent of other retirement benefits, if any, shall not exceed Rs. 3500.

2. On retirement from the High Court, the petitioner's pension was fixed at Rs. 1067 per month and he was to be paid, while working as Chairman, salary on the basis of the difference between Rs. 3500 and the pension. The petitioner was, however, paid monthly salary at the rate of Rs. 2263 and a sum of Rs. 170 was withheld from the salary. The petitioner maintained that he was entitled to be paid Rs. 3500 and, therefore, the difference between that sum and the amount fixed as pension would be the salary to which he would be entitled. When no heed was paid to his demand, he was obliged to approach this Court for a writ of mandamus or appropriate direction.

3. Two counter-affidavits have been filed by the Director of Audits and Accounts to justify the claim for deduction of Rs. 170 per month on the basis of pension equivalent of gratuity.

4. At the hearing Mr. Sen appearing for the respondents has not been able to lay his hands on any

statutory provision which would authorise such a deduction as pointed out earlier. The gratuity is payable under Section 17-A of the High Court Judges (Conditions of Service) Act, 1954, as amended by Act 35 of 1976. It is conceded by Mr. Sen that in case the petitioner was not re-employed after February 1, 1980, when he retired as a Judge, no recovery was to be made from his pension. The petitioner continued to be Chairman of the Tribunal till he retired on the basis of re-employment and re-employment was covered by the terms indicated in Annexure B which we have extracted above. It is conceded by Mr. Sen that the re-employment, was contractual and the terms of the contract indicated that the petitioner was entitled to a salary not exceeding Rs. 3500. The petitioner has not claimed anything beyond Rs. 3500 including the pension and according to him after deducting the pension of Rs. 1067 per month he is entitled to the balance sum of Rs. 2433 and out of that the sum of Rs. 170 as pension equivalent of gratuity is not deductible every month. Mr. Sen drew inspiration for the action taken in recovering Rs. 170 per month by laying his hands on the provisions contained in Clause 9(1)(c) of Part D of Schedule II of the Constitution. That provision relates to the Judges of the Supreme Court and the particular provision indicates that if a Judge of the Supreme Court has been a Judge of the High Court previously and before appointment as a Judge of the Supreme Court if he had received a retirement gratuity in respect of previous service, his salary has to be reduced by the pension equivalent of gratuity. This is absolutely on the basis that the retirement has come to an end when the Judge of the High Court has become a Judge of the Supreme Court. The provision therein or the principle underlying the provision can have no application to a case of this type where the Judge has retired and he undertakes a different service on contractual basis.

5. We are satisfied that there is absolutely no justification for directing recovery of the pension equivalent of gratuity at the rate of Rs. 170 per month. In fact, this amount appears to have been arbitrarily fixed. If the Judge had to be subjected to such a deduction, the entire gratuity was to be taken into account and it could not be confined to the sum paid to him as gratuity after deduction or adjustment. There could be a case where the entire gratuity had been adjusted against existing dues to be recovered and, therefore, nothing was paid in cash at the time of retirement. In such a case there would be no scope to demand any adjustment by way of pension equivalent of gratuity accepting the manner in which it has been done here. The method adopted will have the effect of serving the Judge if the amount of gratuity to which he is lawfully and legitimately entitled.

6. We are, therefore satisfied that the action of the respondents was without any foundation in law and the petitioner has been unnecessarily harassed over such a trifling matter. Several representations made by him went unheeded and he was obliged to come before this Court. We direct the respondents to forthwith, and at any rate not beyond 30 days from today, to pay all the dues of the petitioner (which he has calculated at R. 3740) without any recovery of pension equivalent of gratuity. The petitioner shall be further entitled to the costs of this petition which we assess at Rs. 3000. This amount shall also be paid along with other dues of the petitioner within the time indicated above.

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