

M. L. Jain

Vs

Union of India and Others

Civil Miscellaneous Petition No. 10044 of 1988 in Writ Petition No. 16093 of 1984

(A. P. Sen, S. Natarajan JJ)

18.08.1988

ORDER

1. This is an application by Shri M. L. Jain, retired Judge of the Delhi High Court questioning the constitutional propriety and legality of the order issued by the Pay and Accounts Officer, Delhi Administration (High Court and Miscellaneous), New Delhi dated July 12, 1988 Purporting to fix his pension at Rs. 26,000 per annum and for an appropriate direction for re-determination of his pension and other pensionary benefits in view of the change in law brought about by High Court Judges (Conditions of Services) Amendment Act, 1986 and 1988 (Act Nos. 38 of 2986 and 20 of the 1988). This order must be read in continuation of the earlier order delivered by this Court in M. L. Jain v. Union of India by which this Court made a direction for payment of pension to the petitioner at Rs. 21,500 per annum in view of the two ceilings then operating against him, viz. (a) a ceiling under the Rajasthan Rules providing that the maximum amount of pension should not exceed Rs. 1500 per month and (b) that under clause (b) of paragraph 2 of Part III of the First Schedule of the High Court Judges (Conditions of Service) Act, 1954.
2. According to the petitioner, in view of the change in law, the amount of pension payable to him has to be re-calculated and re-determined at Rs. 41,600 per annum w. e. f. January 1, 1986 which amount has to be further increased to Rs. 46,100 per annum w. e. f. November 1, 2986 in place of the pension of Rs. 21,500 as earlier directed.
3. The question that falls for determination in this order is whether consequent upon the improvement of the service conditions including pension and other benefits by the High Court Judges (Conditions of Service) Amendment Acts, 1986 and 1988 and pursuant to the Office Memoranda issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions. Department of Pensions and Pensioner's Welfare dated April 14, 1987 and April 16, 1987, which amount has to be further increased to Rs. 46,100 per annum w. e. f. November 1, 1986 in place of the pension of Rs. 21,500 as earlier directed. In view of the importance of the question involved, we requested Shri K. Parasaran, learned Attorney General to assist the court. We are greatly beholden to the learned Attorney General for the assistance that he has rendered.
4. The facts are uncontroverted. The petitioner has had a long and distinguish career in judicial service extending over a period of 38 years and 9 months, including 9 years and 21 days as a Judge of the High Court. When the petitioner was appointed as a Judge of the High Court of Rajasthan on July 1, 1975, he was a member of the Rajasthan Higher Judicial Service having been a District and Session Judge for the period from November 9, 1970 to July 1, 1975. On his appointment as a Judge of the Rajasthan High Court, the petitioner opted, for the purpose of his pension, for Part III of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954. On July 23, 1978 the

petitioner was transferred as a Judge of the High Court of Delhi under Article 222 (1) of the Constitution. On July, 24, 1978 the petitioner was sworn in as a Judge of the Delhi High Court and continued to hold that office till the date of his retirement on July 2, 1984. In order to appreciate the point in its true perspective, it is necessary to set out the relevant constitutional and other statutory provisions as well as the changes brought about by the High Court Judges (Conditions of Service) Amendment Acts, 1986 and 1988, as also the Office Memoranda issued by the Government of India, ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare dated April 4, 1987 and April 16, 1987 for upward revision of pension and rationalisation of the same.

5. Article 221 of the Constitution enacts :

221. Salaries etc. of Judges. - (1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) 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 by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule :

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence and pension shall be varied to his disadvantage after his appointment.

Under clause (1) every Judge of High Court is thus entitled to such salaries as may be determined by Parliament by law. By clause (2) such a 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. Until such a law is made, every such Judge shall be entitled to such salaries, allowances and rights as are specified in the Second Schedule.

6. The relevant provision relating to the petitioner Shri M. L. Jain is the one contained in Section 15 (1) (b) of the High Court Judges (Conditions of Service) Act, 1954 which is a law made by Parliament regulating his right to pension and its reads :

15. Every Judge

(a) * * *##

(b) who is not a member of the Indian Civil Service but has held any other pensionable civil post under the Union or a State, shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part III of the First Schedule :

It is unquestionable that while the salary of Judges of the High Court is charged on the Consolidated Fund of the State, the pension of such High Court Judges is charged on the Consolidated Fund of India.

7. Paragraph 2 of Part III of the First Schedule as amended by Act 35 of 1976, which was in force on July 1, 1975 when the petitioner was first appointed as a Judge of the Rajasthan High Court, was in these terms :

2. The pension payable to such a 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 a 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.

By Act 38 of 1986 in Clause (b) of paragraph 2 of Part III of the First Schedule of the Act. the special additional pension of Rs. 700 has been raised to Rs. 1600 and the ceiling of Rs. 3500 to Rs. 8000 respectively w. e. f. November 1, 1986. There is however a proviso beneath clause (b) which reads :

Provided that the pension under clause (a) and the additional pension under clause (b) together shall in no case exceed Rs. 54,000 per annum in the case of the Chief Justice and Rs. 48,000 per annum in the case of any other Judge.

8. Rule 2 of the High Court Judges Rules, 1956 as amended till March 18, 1987, which governs all Service Judges, provides :

2. Conditions of Service in certain cases.-The conditions of service of Judge of 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 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, 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 and holding the rank of Joint Secretary to the Government of India stationed at New Delhi.

9. It would be convenient at this stage to refer to the decisions taken by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare. On March 18, 1987 the Government of India by Resolution No. 2/13/87 PIC accepted the recommendations of the Fourth Central Pay Commission for upward revision of pension and pensionary benefits. It was applicable to all pensioners/family pensioners who were drawing pension/family pension under the C. C. S. (Pension) Rules, 197, C. C. S. (Extraordinary Pension) Rules and the corresponding rules applicable to railway pensioners and pensioners of All India Service.

10. In pursuance of the aforesaid resolution, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare issued on Office Memorandum No. 2/1/87-PIC-II dated April 14, 1987 bringing about modifications in the rules regulating pension, death-cum-retirement gratuity and family pension under the C. C. S. (Pension)

Rules, 1972. Rule 3. 1 of the Rules as modified made the revised provisions applicable to government servants who retired or died in harness on or after January 1, 1986, Rule 5. 2 provided that the pension shall be calculated at 50 per cent of average emoluments in all case instead of under the slab formula given in clause (a) of sub-rule (2) of Rule 49 of the Pension Rules.

11. By a subsequent Office Memorandum dated April 16, 1987 the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare issued a scheme for rationalisation of pension structure for pre-January 1, 1986 pensioners. It applied to all pensioners belonging to the classes enumerated above, including officers of the Indian Civil Service who retired from service on or after January 1 1973. Paragraph 2. of the Office Memorandum provides that separate orders would be issued by the Ministry of Defence in regard to Armed Forces Pensioners/Family Pensioners, Paragraph 2.3 is a provision with regard to retired Judges of the Supreme Court and the High Courts and it provides :

These orders do not also apply to retired High Court and Supreme Court Judges and other constitutional/statutory authorities whose pension etc. is governed by separate orders. Necessary orders in their case will be issued by the respective administrative authorities.

12. Paragraph 5 of the aforesaid Office Memorandum provides for payment of additional benefit equal to the difference between half of the emoluments and the basic pension in view of re-calculation of pension at 50 per cent of average monthly emoluments in place of the slab system. It further provides that there would be no upper ceiling on the amount of pension now so worked out.

13. On December 18, 1987 the Government of India, Ministry of Law and Justice, Department of Justice purported to issue a letter addressed to (1) Accountants General, All States, (2) the Pay and Accounts Officer, Supreme Court of India, New Delhi, and (3) the Pay and Accounts Officer No. XIV, Delhi Administration, New Delhi giving directions as to the manner in which the basic pension of the Supreme Court Judges and High Court Judges governed by the provisions of Part III of the First Schedule to the High Court/Supreme Court Judges (Conditions of Service) Act, 1954/1958 is to be determined, the relevant portion whereof reads :

The ordinary pension admissible to High Court/Supreme Court Judges under para 2 (a) of Part III of the First Schedule/Schedule to the High Court/Supreme Court Judges (Conditions of Service) Act, 1954/1958, respectively, may be revised with effect from January 1, 1986 as in the case of the employees of Central Government or from some other date, the respective State Governments may decide to adopt these orders or an independent order issued by the, if any to grant the benefit of increased pension on similar lines to their employees including Members of Higher Judicial Service.

The said letter goes on to say :

This is subject to the condition that the total pension including additional pension admissible to such Judges under paras 2 (a) and (b) of Part III of the First Schedule/Schedule to the High Court/Supreme Court Judges (C/S) ct, 1954/1958, shall not exceed Rs. 48,000 p. a., Rs. 54,000 p., and Rs. 60,000 p. a., in the case of Judge, High Court, Chief Justice, High Court/Judge, Supreme Court of India and the Chief Justice of India, respectively.

14. We fail to appreciate the propriety of the aforesaid letter of the Ministry of Law and Justice giving liberty to the different State Government to deny the benefit of the revised pension to the Service Judges consequent upon the enactment of Acts 38 of 1986 and 20 of 1988 read along with the aforesaid Office Memoranda issued by the Government of India. Ministry of Personal, Public Grievances and Pensions, Department of Pension and Pensioners Welfare dated April 14, 1987 and April 16, 1987 and Rule 2 of the High Court Judges Rules, 1956. Virtually this means that the State Governments may or may not issue any orders in terms of paragraph 2.3 of the Office Memorandum dated April 16, 1987 appointing a date for grant of revised pension, or appoint different dates for the grant of revised pension to the retired High Court Judges who had opted to be governed by Part III of the First Schedule of the ct. Such a direction, in our view, was constitution. It is tantamount to denial of equal treatment to persons belonging to the same class without any rational basis.

15. It was urged on behalf of the petitioner that the Pay and Accounts Officer should not have denied the petitioner the benefit of the higher pension he was entitled to in the light of the changed provisions of law and that paragraph 2.3 of the Memorandum had no relevance to the petitioner's case because the petitioner, by reason of his transfer from the Rajasthan High Court to the Delhi High Court under Article 222 of the Constitution became automatically a Judge of the Delhi High Court and therefore he was governed by the first proviso to Rule 2 of the High Court Judges (Conditions of Service) Rules, 1956 which provides that in the case of a Judge of the High Court of Delhi and Judge of the High Court of Punjab and 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 stationed at New Delhi. It was urged by reason of this position the petitioner was entitled to the benefits of pension in restructured scale set out in the Memorandum. It was further stated that basic pension of the Pay and Accounts Officer in reckoning the basic pension of the petitioner at Rs. 1500 per month as provided in column I to the Table appended to the Memorandum, and not at Rs. 2925 merely on the strength of the earlier position noticed in M. L. Jain case, despite the changes brought about by Act 38 of 1986 and Act 20 of 1988 and in depriving him of the benefit of additional relief of Rs. 250 per month w. e. f. January 1, 1986 was wholly is conceived and unwarranted. We not only found the contentions of the petitioner to have force but also to be irrefutable ones.

16. To bring out more forcefully how the government action is patently arbitrary and as to how he had been subjected to discriminatory treatment without there being any justifiable basis for it the petitioner brought to our notice the higher rates of pension the Pay and Accounts Officer had fixed for some other Judges of the Delhi High Court even though their overall period of service and their tenure of office as a Judge of the High Court was lesser than his. While the Pay and Accounts Officer has fixed the pension of the petitioner at Rs. 26,000 per annum, the very same authority had fixed the pension of Shri J. D. Jain at Rs. 46,340 and that of Shri D. R. Khanna at Rs. 44,684 per annum who had also retired as Judges of the Delhi High Court. They had put lesser periods of total service as well as service as High Court Judges. Shri J. D. Jain had put in judicial service for a period of 35 years, 7 months and 19 days including 6 years, 5 months and 2 days as a Judge of the Delhi High Court. Shri D. R. Khanna had a total period of judicial service of 34 years, 10 months and 25 days including 5 years, 11 months and 28 days as a Judge of that High Court. We must confess that it surpasses our comprehension as to on what rational basis the Pay and Accounts Officer deemed it just and proper to accord differential treatment to the petitioner and (sic by) fixing his pension at the low figure of Rs. 26,000 when other Judge of the same High Court who had put in lesser number of years of service were held entitled to pension at much higher rates.

17. The State Government of Uttar Pradesh by its notification No. 14/1/39/84 CX (I) dated May 31,

1988 has brought about a change in clause (b) of paragraph of Part III of the First Schedule and revised the rates of pension w. e. f. January 1, 1986 in terms of the aforesaid Memorandum. Accordingly, a Judge of the Allahabad High Court Shri J. P. Chaturvedi who retired on February 7, 1981 had his pension fixed at Rs. 46,100 per annum. We are given to understand that he had put in much shorter period of service as compared to the petitioner. We commend the action of the State Government of Uttar Pradesh in issuing a notification as abovesaid to clarify the position and to ensure the implementation of the change brought about in clause (b) of paragraph 2 of Part III of the First Schedule and would direct all the State Governments to issue orders in similar terms.

18. The learned Attorney General with his usual fairness frankly conceded that there is patent disparity in the pension fixed for the petitioner at Rs. 6,000. Shri Kuldip Singh, earned Additional Solicitor General appearing on behalf of the Union of India assured us that the disparity would be removed as expeditiously as possible and the authorities would endeavor to pay the difference to the petitioner without delay. The learned Attorney General was kind enough to say that he would advise the government to bring about parity between the pension drawn by the petitioner and the other Judges in India.

19. We refrain from expressing any opinion as to the effect of lifting of the ceiling on the special additional pension at Rs. 8000 per annum placed by clause (b) of paragraph 22 of Part III of the First Schedule. The question really does not arise for our consideration at the moment and is left open.

20. In the result CMP No. 18044 of 1988 is allowed. The impugned order of the Pay and Accounts Officer dated July 12, 1988 is quashed. We direct the Union of India as well as the Pay and Accounts Officer, Delhi Administration (High Court and Miscellaneous), New Delhi to re-fix the pension of the petitioner at Rs. 41,600 per annum w. e. f. January 1, 1986 and at Rs. 46,100 per annum w. e. f. November 1, 1986. We further direct that the arrears of the difference in the amount of pension be paid to the petitioner as expeditiously as possible and in any event, not later than two months from today. The petitioner shall also be entitled to all other consequential benefits.

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