

M.L. Jain

Vs

Union of India and Another, Respondents.

Civil Appeal No. 4756 of 1992

(P.B. Sawant, G.N. Ray JJ)

06.11.1992

JUDGMENT

1. Special leave granted. As a retired Judge of the Delhi High Court, the appellant joined the Board of Arbitration, Ministry of Labour as its Chairman on 31st December, 1984 and served in that capacity till 2nd August, 1988. There is no dispute that during this period he received remuneration as per the terms of his appointment as such Chairman. While he was serving as the Chairman of the Board of Arbitration, the appellant on 23rd February, 1987 was also appointed a member of a committee to inquire into the cases of riots following the assassination of Mrs. Indira Gandhi. The terms of appointment as such member were contained in a communication dated 12th May, 1987 addressed by the Director, Ministry of Home Affairs, Government of India to the Secretary (Home), Delhi Administration. According to the said terms, the appellant was to get a lump sum of Rupees, 24,000/- as honorarium for the work he was to do as a member of the Committee. It appears that initially the term of the Committee was six months and honorarium, therefore, was sanctioned for six months. It, however, appears that the Delhi High Court issued an injunction on 24th December, 1987 restraining the Committee from functioning. The term of the Committee, therefore, had to be extended. Consequently, it appears that & Ministry of Home Affairs raised the lump sum honorarium of Rs. 24,000/- to Rupees 40,000/- with a stipulation that half of the amount be paid immediately and the rest to be paid when the Committee's work was over, It appears that the appellant had already received a sum of Rs. 20,000/- which was taken note of in the said letter and it was added that the balance of the amount would be paid after the Committee's work was over.

2. The Committee remained in existence till 4th October 1989 on which day the High Court quashed the notification under which it was appointed. Since the terms of the appointment of the appellant as a member of the Committee stipulated payment of lump sum honorarium of Rs. 40,000/- for the entire work out of which the appellant had already received Rs. 20,000/-, what remained to be paid to the appellant was only a sum of Rs. 20,000/-. However, the appellant filed a writ petition before the High Court contending that from the date he ceased to be the Chairman of the Board of Arbitration and worked as a full-time member of the Committee from 3rd August, 1988 till 22nd March, 1990 till which date, according to him, the Committee remained in existence, he was entitled to remuneration as per the guidelines laid down in the Government of India's O.M. dated 8th October, 1987. According to these guidelines, the retired Supreme Court and High Court Judges appointed on Commissions / Committees of Inquiry or re-employed on whole-time basis by the Government of India were to get remuneration as follows: (i) Pay, which together with pension and pension equivalent of other forms of retirement benefits up to Rs. 8,000/- in cash of retired High Court Judges w.e.f. 1-4-1986. (ii) Dearness Allowance as payable to officers of All India Services getting pay of Rs. 6,700/- per month and above, either from the date from which it was admissible to sitting Judges or from the date on which they are appointed to Commissions / Committees of

Inquiry. (iii) Compensatory (City) Allowance as would be admissible to the serving Judges of the High Courts at the head-quarter station of the Committee / Commission. (iv) Travelling Allowance and Daily Allowance etc. (v) Rent free furnished accommodation or house rent allowance at 12.5% of pay in lieu thereof. This O.M. also separately stated the remuneration which will be payable to the retired Judges re-employed on part-time basis.

3. The appellant, therefore, claimed that since he worked on the Committee for 37 months from 23rd February, 1987 to 2nd August, 1988 during which period he simultaneously worked as Chairman of the Board of Arbitration, he should be paid honorarium at the rate of Rs. 4,000/- per month and from 3rd August, 1988 to 23rd March, 1990 during which period he worked only on the Committee, i.e., as a full-time member of the Committee, he should be paid salary as payable to a retired Judge re-employed under the aforesaid Government of India's O.M. of 8th October, 1987.

4. The writ petition was resisted on behalf of the Administration contending that the terms of the appellant's employment on the Committee in question were contained in the letter of appointment which shows that initially the appellant was to be paid only Rs. 24,000 / - in lump sum as honorarium for the entire work of the Committee. However, this honorarium was later on increased to Rs. 40,000/ -. The appellant has already been paid Rupees 20,000/- and the only claim that he could make was for the balance amount of Rs. 20,000/- which the respondents were always willing to pay. The High Court on 23rd October, 1991 dismissed the writ petition in limine.

5. Aggrieved by the said decision, the appellant has filed this appeal by special leave under Article 136 of the Constitution of India. In addition to his contentions in the writ petition before the High Court, the appellant took up a contention before us submitting that for the full-time work of the Committee another member of the Committee, viz., Shri A. K. Banerjee, was paid remuneration as per the O.M. dated 8th October, 1987 applicable to the pensioners in accordance with the usual terms of their appointment, i.e., their pay should not exceed the last pay drawn along with pension and pension equivalent of other forms of retirement benefits. This has been admitted by the Delhi Administration in their additional counter-affidavit filed on their behalf on 2nd September, 1992. At the same time, they have pointed out that there was another committee similar to the Jain Banerjee Committee, viz., Justice Kapur Mittal Committee appointed for the same work. Justice Kapur who was a retired Judge of the Delhi High Court and was not holding any other charge from 23rd February, 1987 to 14th April, 1987 was paid pay and allowances as per the O.M. dated 8th October, 1987. However, when he was appointed from 15th April, 1987 as Chairman of the Appellate Authority under the Sick Industrial Companies (Special Provisions) Act, 1985, he was paid only Rs. 40,000/- as honorarium for the remaining work of that Committee which lasted up to 29rd February, 1990 (sic).

6. Both these instances show that those who worked as full-time members of the Committees in question were paid salary and allowances as per the guidelines contained in the O.M. dated 8th October, 1987. No explanation whatsoever has been given as to why the appellant was not paid similarly as per the said guidelines for the period he worked as a full-time member of the Committee. That period would be from 3rd August, 1988 to 4th October, 1989 if we take the period till the Committee, according to the appellant, existed although it had not been doing any work, i.e., from 4th October, 1989 till 22nd March, 1990 since the High Court had, as stated above, quashed the notification appointing the Committee on 4th October, 1989. We are unable to understand as to how the Committee could transact any work after the High Court quashed it out of existence w.e.f. 4th October 1989. We are also unable to understand as to how the Committee could function at all from 24th December, 1987 when the High Court had injuncted it from functioning. We will,

however, presume that since the Committee continued to exist the appellant was tied up with it and as has been stated by him in his further affidavit, the Committee did its work till it was quashed.

7. Hence, we feel that in the circumstances of the case the appellant would be entitled to the salary and allowances as per the O.M. dated 8th October, 1987, at least from 3rd August, 1988 till 4th October, 1989 when the notification constituting the Committee was quashed. We, therefore, allow the appeal and direct the respondent-Delhi Administration to pay salary and allowances to the appellant for the period, from 3rd August, 1988 to 4th October, 1989 as per the guidelines given in the O.M. dated 8th October, 1987. Any amount paid to the appellant over and above Rs. 24,000/- which was the originally stipulated honorarium will be adjustable against the amount directed to be paid by this order. The appeal is allowed accordingly but with no order as to costs.

Appeal allowed.

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