

# SUPREME COURT OF INDIA

Union of India (Uoi)

Vs.

M.C. Desai

(S Agrawal and G Pattanaik JJ.)

10.10.1995

## ORDER

1. Having regard to the office report dated September 12, 1995 the application for substitution of legal representatives of respondent Nos. 1 and 8 is dismissed for non-prosecution. As regards respondent No. 10 we find that she was not impleaded as a party when the special leave petition was filed in 1988 and an application was submitted for impleading her as a party on April 27, 1995 and before that date respondent No. 10 had died. An application has been filed to bring on record her legal representatives. No steps have been taken for service of the substitution application on the legal representatives. The said applications for impleadment of respondent No. 10 as well as substitution are also dismissed for non-prosecution. As regards respondent No. 2, Mr. S.K. Verma, We find that in the impugned judgment of the High Court it is mentioned that Mr. S.K. Verma expired on May 9, 1988 leaving Smt. Nirmala Verma as his legal representative and that the application for substitution of Smt. Nirmala Verma as the legal representative of Mr. S.K. Verma was allowed by the High Court on May 12, 1988. Smt. Nirmala Verma, however, has not been impleaded as a party in the appeal and Mr. S.K. Verma, (who was dead) was impleaded as respondent No. 2. The appeal filed against Mr. S.K. Verma, respondent No. 2 is, therefore, not maintainable. The appeal against respondent Nos. 1 and 8 will stand dismissed as having abated and as regards respondent No. 2 it is treated as not maintainable. It survives against respondent Nos. 3 to 7 and 9.

2. We have heard the learned Additional Solicitor General for the appellants and the learned Counsel for the respondents on the appeal.

3. The appeal relates to the payment of Death-cum-Retirement-----(DCRG) to Judges of the High Court who retired prior to October 1, 1974. By the impugned judgment the High Court has held that DCRG is payable to such Judges in view of Rule 2 of the High Court Judges' Rules, 1956 (hereinafter referred to as 'the Rules') since the members of the Indian Administrative Service are entitled to the said benefit under the All India Services (Death-cum-Retirement Benefits) Rules, 1958.

4. The learned Additional Solicitor General has fairly invited our attention to the decision of this Court in Union of India v. Gurnam Singh, 1982 (3) SCR 700, wherein it has been held that the

benefit of leave encashment would be available to Judges of the High court in view of Rule 2 of the Rules. Having regard to the principle laid down in the said decision of this Court we are in agreement with the view of the High Court that in view of Rule 2 of the Rules the High Court Judges who retired prior to October 1, 1974 were also entitled to avail the DCRG benefit that was available to A and officer of the Indian Administrative Service in the rank of the Secretary to the State Government who is governed by the All India Services (Death-cum-Retirement Benefits) Rules, 1958.

5. The High Court has awarded interest @ 12% on the amount of gratuity which was denied to the respondents. We do not find any ground to interfere with the said direction given by the High Court.

6. With regard to the payment of ad hoc relief apart from the pension the High Court has referred to Government order dated August 29, 1977 which shows that ad hoc relief was given from January 1, 1973 to Judges who retired prior to October 1, 1974. The High Court has also pointed out that the said payment had been made to some of the respondents while it was denied to other respondents similarly situate. The High Court was, in our opinion, justified in giving the directions regarding payment of ad hoc relief to respondent Nos. 3, 4, 7, 8 and 9.

7. Respondent No. 8 had served as a Judge of the High Court for six years and seven months while respondent No. 9 had served for six years and five months. The period of service of both the respondents was less than seven years. Placing reliance upon its judgment in *Deoki Nandan Agarwala v. Union of India* (Writ Petition No. 20328 of 1986 decided on March 15, 1988), the High Court has held that Judges who had not completed seven years of service would also be entitled to benefit of pension provided they had rendered service for more than four years. The said view of the High Court in the case of *Deoki Nandan Agarwala* (supra) has been reversed by this Court in *Union of India v. Deoki Nandan Agarwala*.

8. In view of the said decision of this Court the judgment of the High Court based on the decision in the case of *Deoki Nandan Agarwala* (supra) cannot be sustained and has to be set aside.

9. The appeal is, therefore, partly allowed and the judgment of the High Court to the extent it holds that respondent No. 9 can avail the pensionary benefit on the basis of the judgment of the High Court in *Deoki Nandan Agarwala* (supra) is set aside. The rest of the judgment of the High Court. is upheld. No costs.