

Abdul Kalam Mohammed Hasan

Vs

State of Bihar and Another

Civil Appeal No. 16815 of 1996

(M. Jagannadha Rao, Sujata V. Manohar JJ)

31.07.1997

ORDER

1. The appellant was a Member of the Indian Administrative Service at the material time. He was due to retire on reaching the age of superannuation on 31-12-1985. On 14-5-1985 the appellant was appointed as the Chairman of the Bihar Public Service Commission. He continued as the Chairman of the Bihar Public Service Commission till his retirement at the age of 62 years on 12-12-1989.

2. At the time when the appellant was appointed as the Chairman of the Bihar Public Service Commission the terms and conditions of service of Members of the Bihar Public Service Commission were governed by the Bihar Public Service Commission (Conditions of Service) Regulations, 1960. The material part of Regulations 12 and 13 was as follows :

"12. (1) In the case of a Member who on the date of appointment was not in the service of the Union or a State, the pension to which such Member will be entitled shall :

(i) In the case of a Chairman, if he has completed six years' service for pension and has drawn pay at the rate of Rs. 2500 a month, be Rs. 5075 per annum; and

(ii) In the case of a Member, other than the Chairman, if he has completed six years for pension and has drawn pay at the rate of Rs. 2250 a month be Rs. 4500 per annum. ...

# \* \* \* ##

13. (1) A Member who at the time of his appointment as such, was in the service of the Central or a State Government shall, at his option to be exercised within a period of six months from the date of his appointment be entitled to draw his pension and other retirement benefits under the rules applicable to the service to which he belonged with effect from the date of his appointment as Member :

Provided that, in such an event, his pay as Member shall be reduced by an amount equivalent to the gross pension (including any portion of the pension which may have been commuted) and the pension equivalent to other retirement benefits and he shall be entitled to draw his pension and other retirement benefits separately.

(2) A Member who at the time of his appointment as such, was in the service of

Central or a State Government and does not exercise the option mentioned in sub-regulation (1) shall count his service as Member for pension and retirement benefits under the rules applicable to the service to which he belonged immediately before such appointment."

3. The appellant being a Member of the Indian Administrative Service at the time when he was appointed as Chairman, Bihar Public Service Commission, exercised his option under Regulation 13(1) and was accordingly in receipt of his emoluments as well as pension from the Indian Administrative Service. Since he exercised his option under Regulation 13(1) he was not entitled to claim any benefit under Regulation 13(2).

4. By a notification dated 12-2-1988 issued by the Government of Bihar, Department of Personnel and Administrative Reforms these Regulations were amended with effect from 1-1-1986. Under clause 3 of this Amendment, Regulation 12(1) was substituted by the following :

"12. (1) In the case of a Member who on the date of appointment was not in the service of the Union or a State Government, the pension to which such member will be entitled shall -

(i) In the case of Chairman, if he has completed six years' service for pension and has drawn pay at the rate of Rs. 7600 a month, be Rs. 15,000 per annum and,

(ii) In the case of member other than the Chairman, if he has completed six years of service for pension and has drawn pay at the rate of Rs. 6700 a month, be Rs. 13,000 per annum :

Provided that if a Member, at the time of his appointment is in receipt of service pension (other than a disability pension), the pension payable under these Regulations shall be in lieu of, and not in addition to, that pension.

Provided further that such Member shall count his service as Member for pension and retirement benefits under the rules applicable to the service to which he belonged before such appointment."

5. The appellant contends that he is entitled to the benefit of the second proviso to Regulation 12 as amended. This contention does not have any merit. Regulation 12 applies to a Member including a Chairman [vide definition of "Member" under Regulation (2)(d)] who, on the date of appointment, was not in the service of the Union or a State Government. Members who were at the time of their appointment in the service of the Central or State Government are governed by Regulation 13. The appellant was, therefore, governed by Regulation 13 and the exercise of his option was also on the basis that he was governed by Regulation 13 which gave him that option. Regulation 12, therefore, cannot apply to the appellant. It only applies to those who were not in the service of Union or State Government at the time of retirement. Therefore, the provisos added in the amended Regulation 12 also cannot apply to the appellant.

6. The appellant has alleged discrimination on the ground that persons who have retired from the service of the State or the Union Government and are in receipt of pension, when they are appointed as Members of the Commission, would get the benefit to the second proviso to the amended Regulation 12 while he is denied that benefit. This submission is also based on a misapprehension. A right similar to the one set out in the second proviso to amended Regulation 12(1) is also

incorporated in Regulation 13 and is set out in sub-regulation (2) of Regulation 13. However, under Regulation 13 an option is given to the person concerned to have the benefits either under sub-regulation (1) or under sub-regulation (2). The reason why the appellant does not get any benefit under sub-regulation (2) is that he has opted for benefits under sub-regulation (1) of Regulation 13. The High Court was, therefore, right in dismissing the writ petition of the appellant. The appeal is, therefore, dismissed. In the circumstances, however, there will be no order as to costs.