

Union of India

Vs

Syad Sarwar Ali and Others

Civil Appeals No. 1207 of 1992 with No. 1206 of 1992

(K. Venkataswami, B. N. Kirpal JJ)

04.12.1997

JUDGMENT

KIRPAL, J. -

1. The only question, though an important one, which arises for consideration in this case is as to what is the ceiling with regard to the pension which is payable to the respondent who retired as a Judge of the Patna High Court.
2. Respondent 1 was appointed as a Judge on 8-4-1970 and he retired on 8-9-1984. During his tenure he worked as Acting Chief Justice of the Patna High Court from 3-1-1979 to 20-9-1979 and again from 23-3-1982 to 28-11-1983. In this way his total period spent as Acting Chief Justice was approximately 28 months and 23 days.
3. On his retirement Respondent 1 became entitled to receive pension. The Accountant General, Bihar calculated the pension of the respondent at the rate of Rs. 1600 per annum for 12 completed years of service and also for two years' complete service as Acting Chief Justice but restricted the pension allowable to Rs. 22,400 being the maximum which could be paid to a puisne Judge on his retirement. It may here be stated that at that time the ceiling on pension of Chief Justice on his retirement was Rs. 28,000 per annum.
4. Respondent 1 then filed a writ petition in the Patna High Court claiming that the ceiling was wrongly applied and inasmuch as he had worked as Acting Chief Justice, therefore, the higher ceiling prescribed for the Chief Justice should have been made applicable and not the lower ceiling. During the pendency of the writ petition the pensions were revised and similarly pension for the puisne Judge has gone up to Rs. 48,000 per annum while in the case of Chief Justice it has gone up to Rs. 54,000 per annum.
5. The writ petition was heard by a Division Bench. There was a difference of opinion between two learned Judges and the matter was placed before the third Judge. It was ultimately held that on a construction of the relevant rules Respondent 1 was entitled to have his pension computed on the basis that he was to get the same benefit which was available to a retiring Chief Justice, namely, the ceiling in his case was to be of Rs. 54,000 per annum and not Rs. 48,000 per annum.
6. On behalf of the appellant it was contended in this appeal by special leave that the rules have been wrongly construed by the High Court inasmuch as Rule 2 provided a ceiling of pension for retiring puisne Judges and Chief Justice and as Respondent 1 had never been appointed as a permanent Chief Justice therefore, the ceiling which was applicable to him for payment of pension

was Rs. 48,000 per annum and not Rs. 54,000 per annum. Shri Singh, the learned counsel for the respondent, has relied upon the High Court decision and has submitted that in matters like this the provision should be construed in the manner which is beneficial to the retiring Judge and, therefore, the High Court was right in coming to the conclusion that the pension payable could be more than Rs. 48,000 per annum.

7. In order to appreciate the rival contentions, it is necessary to refer to the rules which regulate the pensions payable to the Judges. The relevant rules are contained in the First Schedule to the High Court Judges (Conditions of Service) Act, 1954. Rules 2 and 7, which are relevant for our purposes, read as follows :

"2. Subject to the other provisions of this part, the pension payable to a Judge to whom this part applies and who has completed not less than seven years of service for pension shall be -

(a) for service as Chief Justice in any High Court, Rs. 4500 per annum for each completed year of service;

(b) for service as any other Judge in any High Court, Rs. 3430 per annum for each completed year of service :

Provided that the pension under this paragraph shall in no case exceed Rs. 54,000 per annum in the case of a Chief Justice and Rs. 48,000 per annum in the case of any other Judge.

* * *

7. For the purposes of this part, service as an Acting Chief Justice of a High Court or as an ad hoc Judge of the Supreme Court, shall be treated as though it were service rendered as Chief Justice of a High Court."

8. It was submitted by Mr. Singh that according to Rule 7 the service which is rendered as Acting Chief Justice of a High Court is, for the purposes of the said part of the Schedule, to be considered and treated as though it was rendered as Chief Justice of a High Court. It is on this basis that for two years of completed service as Acting Chief Justice pension at the rate of Rs. 4500 per annum was taken into consideration in the case of Respondent 1. It was contended that as for the substantial part of Rule 2, Respondent 1 was to be considered as being a Chief Justice for the purposes of calculation of annual rate of pension, there was no reason that for the purposes of applicability of the proviso, the same principle should not apply. If the same principle was applied, then the respondent should be regarded as being entitled to a higher ceiling of Rs. 54,000 per annum as a Chief Justice.

9. Right to pension arises when there is termination of service. This happens when a person retires or resigns or on his death. It is on the happening of one of these contingencies that the question will arise with regard to amount of pension. As we read Rule 2 of the First Schedule, it is clear that the provision for pension for the Chief Justice is different than that of a puisne Judge. The rate and the ceiling of pension of the Chief Justice is higher than that of a Judge, but the proviso states that the pension shall not exceed Rs. 54,000 per annum in the case of a Chief Justice and Rs. 48,000 per annum in the case of any other Judge. It clearly implies that on the date of retirement, when the question of what is the amount of pension which is to be payable arises, it is seen whether the person concerned was a Chief Justice or a puisne Judge. Merely because at an earlier point of time

during his judicial career, a Judge had acted as a Chief Justice would not mean that he was a Chief Justice on the date of his retirement. The provision of a higher ceiling for pension is in the case of a Chief Justice appointed under Article 217 and not of any other Judge. It is true that in calculating the amount of pension which is payable, the period during which a Judge had acted as Chief Justice would entitle that period to be counted as if he was a Chief Justice, but this is a special provision contained in Rule 7 of the First Schedule and is meant only for that limited purpose of calculation and no more.

10. The substantive portion of Rule 2 read with Rule 7 of the First Schedule deals with the question of calculating the pension payable to a Judge during his judicial career. In computing the pension, the time which he had spent as a Judge or Acting Chief Justice or Chief Justice is taken into consideration. The role played by the proviso is only to restrict the maximum amount of pension which is payable in respect of Judges on their retirement. The maximum amount of pension which is payable is Rs. 48,000 per annum but in the case of a Chief Justice the maximum amount is Rs. 54,000 per annum. While computing the pension of a person who had retired as a Chief Justice it is possible that he may not have completed even one year as a Chief Justice with the result that his pension may now have to be calculated at the rate of Rs. 3430 per annum for each completed year of service but by reason of the fact that on the date of his retirement he was a Chief Justice, the ceiling for pension is placed at the higher figure of Rs. 54,000 per annum instead of Rs. 48,000 per annum. It is not possible to read the word "Chief Justice" occurring in the proviso to Rule 2 as a person who during his judicial career, had been a Chief Justice for more or less than a period of one year.

11. Mr. Singh, learned counsel for the respondent, has drawn our attention to Maxwell 12th Edn. where at page 92 dealing with the judicial construction, it was submitted by the learned counsel that in the case of a beneficial legislation like the present, the court should construe it liberally to that full effect or benefit is available to the person concerned. While there is some force in this submission, but in our opinion, when the language of the provision is clear and suffers from no ambiguity, then it will not be possible or permissible for the Court to give a meaning different from the one which the language suggests. The rules contained in the First Schedule are conscious of the fact that the retiring incumbent may be a Judge or a Chief Justice or may have acted as an Acting Chief Justice for a period of time where for the purpose of calculating the quantum of pension, the period spent by a Judge as an Acting Chief Justice is taken into consideration for the purpose of fixing the ceiling. However, an Acting Chief Justice, who is one appointed under Article 223 of the Constitution is not equated with the Chief Justice appointed under Article 217 of the Constitution. In our opinion, therefore, in order to be eligible to get the higher pension of Rs. 54,000 per annum, the Judge must retire as a Chief Justice and not as puisne Judge or an Acting Chief Justice.

12. As already noticed the respondent had retired on 8-9-1984. We are informed that for the last 13 years he has been drawing pension on the basis that it is the higher ceiling which was applicable to him. This is as a result of the judgment of the Patna High Court. Inasmuch as the view of the Patna High Court does not appear to be correct and, therefore, the appeal has to be allowed, the normal consequence of the same would be that not only would the pension of respondent have to be recomputed, which will result in lowering his pension to the maximum of Rs. 48,000 per annum as of now, but he may also have to refund some amount of pension which has been received by him. In our view the ends of justice would be met if we direct that the respondent shall not be liable to refund any excess amount which he may have received but henceforth his pension will have to be calculated on the basis that the maximum pension which he could draw was that of a puisne Judge on his retirement. With the aforesaid direction this appeal is allowed, the judgment of the High

Court is set aside and the writ petition filed by the respondent stands dismissed. There will be no order as to costs.

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13. The appeal is dismissed as not pressed.