

SUPREME COURT OF INDIA

Justice P. Venugopal

Vs.

Union of India

S.L.P.(C) No.15450 of 2003

(V. N. Khare, C.J.I., Ashok Bhan and S. B. Sinha, JJ.)

01.09.2003

ORDER

1. The petitioner is a former Judge of the Madras High Court. He was appointed on 25-1-1979 and superannuated on 7-12-1981. In the meanwhile, by a notification dated 29-7-1981, he was appointed as Commission of Inquiry to inquire into the incidents which took place in Coimbatore Town on 23-7-1981 arising from attacks on the office premises of two Tamil newspapers 'Dinakaran' and Malai Murasu'. In the afore mentioned notification dated 29-7-1981 it was stated :

"I am directed to say that the President requests Shri Justice P. Venugopal, Judge, Madras High Court to function as the Commission of Inquiry under the Commissions of Inquiry Act, 1952 in respect of the incidents that took place in Coimbatore Town in Tamil Nadu on 23rd July, 1981.

2. The time spent by Shri Justice P. Venugopal in the performance of the said functions will count as "Actual Service" within the meaning of paragraph 11 (b)(i) of Part "D" of the Second Schedule to the Constitution of India read with Section 2 (1)(c)(i) of the High Court Judges (Conditions of Service) Act, 1954. Shri Justice Venugopal will not be entitled to any extra remuneration for the

above work except travelling allowances and daily allowances as admissible under the High Court Judges (Travelling Allowance) Rules, 1956".

2. Pursuant to or in furtherance of the said order dated 29-7-1981, the Government of Tamil Nadu also issued an order on 1-8-1981 appointing the petitioner as a Commission of Inquiry, terms of reference whereof are as under :

"(i) to enquiry into the alleged incidents of attack on the offices and premises of the newspapers 'Dinakaran' and 'Malai Murasu' in Coimbatore Town on 23rd July, 1981; and

(ii) to determine the persons who actually took part in such alleged incidents of attack on the said offices and premises."

3. The petitioner despite his superannuation as a High Court Judge continued to occupy the post of Commission of Inquiry, wherefor the Government of Madras (as the State was thence known) issued an order dated 28-12-1981 stating :

"Justice P. Venugopal (Retired) who has been appointed as the Commission of Inquiry on a full time basis will draw the total emoluments last drawn by him as a Judge of the High Court, minus the pension to which he is eligible, excluding the pension commuted, if any, for the period he functions as the Commission of Inquiry."

(Emphasis supplied)

4. Yet again he was appointed by the Government of Madras as a One Man Commission of Inquiry in relation to communal riots which took place in the District of Kanyakumari by an order dated 22-3-1982.

5. He was appointed as an ad hoc Judge for a terms of one year in 1982 and yet again for another term of one year from 19-8-1983. After he demitted his office as an ad hoc Judge of the Madras High Court, he submitted his reports on 21-9-1985 and 30-4-1987. He was appointed as the Commissioner of Payments under the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 by an order dated 1-8-1986, which post he held till 31-12-1988.

6. The petitioner was allowed pension as a High Court Judge for holding office for two years ten months and fourteen days.

7. He in the year 2001 filed a writ petition before the Madras High Court claiming, inter alia, for re-fixation of his pension upon taking into account the purported period of services from 1-8-1981 to 31-12-1988. The said writ petition by reason of the impugned judgment has been dismissed by the Madras High Court. This is how the petitioner is before us.

8. A short question which arises for consideration in this matter is as to whether the pension of the petitioner can be re-fixed keeping in view the fact that he held different offices from 1-8-1981 to 31-12-1988.

9. Article 217(1) of the Constitution of India provides for appointment of a Judge of the High Court. The age of superannuation for a Judge of the High Court is 62 years. Constitution of India in terms of Article 224 A provides for appointment of an ad hoc Judge in the following terms :

"224A. Appointment of retired Judge at sittings of High Courts - Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President request any person who has held the office of Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court."

(Emphasis supplied)

10. An ad hoc Judge, thus in terms of the aforementioned provision is only entitled to such allowances as the President may by order determine. A legal fiction, however, has been created therein in terms whereof he is not to be treated as a Judge of the High Court except for the purpose of exercising his jurisdiction, powers and privileges. An ad hoc Judge is appointed for reasons specified in the notification issued by the President of India in this behalf. An ad hoc Judge does not become a part of the High Court. If an ad hoc Judge is not considered to be a Judge of the High Court in terms of the legal fiction created, the question of computing his pension for the period he is appointed as an ad hoc Judge would not arise inasmuch a person is not entitled to any further pensionary benefits after he demits the constitutional office which he holds in terms of Article 217 of the Constitution. The claim of the petitioner that the period during which he was appointed as an ad hoc Judge should also be considered for the purpose of computing his pensionary benefits is, thus, without any substance.

11. The sold question which survives for consideration is as to whether the period during which he served as Commission of Inquiry or as Commissioner of Payments under the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 can be taken into consideration for computing the pensionary benefits. As noticed, the petitioner in terms of the notification of the Government of Madras dated 28-12-1981 was to receive the emoluments drawn by him as a High Court Judge minus the pension to which he was eligible. Pension to a retired Judge is payable in terms of Article 221 of the Constitution of India. Sub-clause (iii) of clause (3) of Article 112 of the Constitution of India provides that the pension payable to or in respect of Judges of any High Court which exercised jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercises jurisdiction in relation to any area included in a Governor's Province of the Dominion of India, shall be charged to the consolidated fund of India. What is charged to the consolidated fund of India is envisaged in clause (2) of Article 221 of the Constitution of India, which in turn would mean that pension would be payable to a Judge for the period during which he rendered his services as a High Court Judge i.e. before attaining the age of 62 years.

12. It is at this juncture profitable to refer to Sections 14, 15 and 16 of the High Court Judges (Salaries and Conditions of Service) Act, 1954 (hereinafter referred to as 'the said Act') :

"14. Subject to the provisions of this Act, every Judge on his retirement, be paid a pension in accordance with the scale and provisions in Part I of the First Schedule.

Provided that no such pension shall be payable to a Judge unless :

(a) he has completed not less than twelve years of service for pension; or

(b) he has attained the age of sixty two years, and, in the case of a Judge holding office on the 5th day of October, 1963, sixty years, or

(c) his retirement is medically certified to be necessitated by ill-health.

Provided further that if a Judge at the time of his appointment is in receipt of a pension other than a disability or wound pension in respect of any previous service in the Union or a State, the pension payable under this Act shall be in lieu of and not in addition to, that pension.

15. Every Judge

(1) (a) who is a member of the Indian Civil Service shall on his retirement, be paid a pension in accordance with the scale and provisions in Part II of the first schedule ;

(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 pension in accordance with the scale and provisions in Part III of the first schedule;

Provided that every such Judge shall elect to receive the pension payable to him either under Part I or Part III of the first schedule, and the pension payable to him shall be calculated accordingly.

(2) Notwithstanding anything contained in sub-section (1) any Judge to whom that sub-section applied and who is in service on or after the 1st day of October, 1974, may if he has elected under the proviso to that sub-section to receive the pension payable to him under Part II or, as the case may be, Part III of the first schedule before the date on which the High Court Judges (Conditions of Service) Amendment Act, 1976, receives the assent of the President cancel such election and elect afresh to receive the pension payable to him under Part I of the first Schedule and any such Judge who dies before the date of such assent shall be deemed to have elected afresh to be governed by the provisions of the said Part I, if the provision of that part are more favourable in his case.

16. The President of India for special reasons direct that any period not exceeding three months shall be added to the service for pension of a Judge.

Provided that the period so added shall be disregarded in calculating any additional pension under Part I or Part II or Part III of the First Schedule."

13. The First Schedule appended to the said Act lays down the manner in which the amount of pension shall be calculated in respect of a person who has retired as a High Court Judge depending upon the source from which he has appointed. By reason of notification dated 1-1-1996, Rule 9 of Part I of the First Schedule, the minimum pension payable to a retired Judge of the High Court was fixed Rs. 51,000/- per annum which reads thus :

"Where a Judge to whom this part applies retires or has retired at any time after the 26th January,

1950, without being eligible for a pension under any other provisions of this part, then notwithstanding anything contained in the foregoing provisions, a pension of Rs. 51,000/- per annum shall be payable to such a Judge.

Provided that nothing in this paragraph shall apply :-

(a) to an additional Judge or acting Judge; or

(b) to a Judge who at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Union or a State."

14. The aforementioned provision, thus, does not apply to an additional or acting Judge. Evidently the same would not apply to the case of an ad hoc Judge.

15. Rule 8 of Part 1 of the Schedule appended to 1954 Act provides that a sum of Rs. 1,80,000/- per annum shall be payable to a Judge as a pension who has completed 14 years of service including not less than six years of service as Chief Justice of one or more High Courts. Subject to the aforementioned provision, the rate of pension which is payable to others is as under :-

"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. 14,630/- per annum for each completed year of service;

(b) for service as any other Judge in any High Court Rs. 11,150/- per annum for each completed year of service, provided that the pension shall in no case exceed Rs. 1,80,000/- per annum in the case of a Chief Justice and Rs. 1,56,000/- per annum in the case of any other Judge."

16. The provisions of law mentioned hereinbefore are absolutely clear and unambiguous. A High Court Judge is entitled to pensionary benefits only in terms of the said Act and not otherwise. The said Act is a self-contained Code. It does not contemplate grant of pension to a retired High Court Judge for holding any other office of profit. Clubbing of services for the purpose of computation of

pension is not contemplated under the said Act and, thus, the Court cannot by process of interpretation of statutory or constitutional provisions hold so.

17. Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the petitioner, however, would submit that in *Justice Nand Lal Ganguly v. State of Uttar Pradesh and others* (Civil Misc. Writ Petition No. 18496 of 1999) a Division Bench of the Allahabad High Court following the decision of this Court in *Union of India and others v. Pratibha Bonnerjea and another* ((1995) 6 SCC 765) held that when a High Court Judge is appointed as Vice-Chairman of the Central Administrative Tribunal, the period during which such service is rendered, is to be tagged during which he held the office of a High Court Judge. reported in 1999 (4) All WC 2985, AIR 1996 SC 693 : 1995 AIR SCW 4713,

18. *Pratibha Bonnerjea* (supra) was decided by a two-Judge Bench of this Court. In that case interpretation of Rule 15-A of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 fell for consideration of this Court which is in the following terms :

"15-A. Notwithstanding anything contained in Rules 4 to 15 of the said Rules the conditions of service and other perquisites available to the Chairman and Vice-Chairman of the Central Administrative Tribunal shall be the same as admissible to a serving Judge of a High Court as contained in the High Court Judges (Conditions of Service) Act, 1954 and High Court Judges (Travelling Allowances) Rules, 1956."

19. The question which was posed for consideration therein was as to whether a High Court Judge who was enjoying a pension as such can be said to be a person holding a pensionable post under the Union or a State at the time when one retires from the post of Vice-Chairman of the Central Administrative Tribunal. It was observed :

".....If she was holding a pensionable post under the Union/State, there can be no doubt that she would not be entitled to pension under Part I but would be entitled to pension under Part III of the First Schedule. That gives rise to the question whether a High Court Judge who is drawing pension can be said to be a person holding a pensionable post under the Union/State. If the answer is in the affirmative the first respondent would be entitled to pension under Part III, but if the answer is in the negative, she would be entitled to pension under Part I of the First Schedule to the Act. That is the moot question for consideration under Rule 15-A, extracted earlier. The pension has to be the same as admissible to "a serving Judge of a High Court under the Act and the Rules made thereunder".

3. Does a Judge of the High Court hold a post under the Union or a State? If yes, the first respondent having retired as a Judge of the High Court and having been drawing pension at all

material times would not be entitled to fixation of pension under Part I of the First Schedule. If, however, it is found that a High Court Judge does not hold a post under the Union or a State, Part I would squarely be attracted as he or she would be outside the scope of Part III. Therefore, what we have to determine is whether the first respondent who was admittedly a pensioner as a retired High Court Judge could be said to be a person holding a pensionable post under the Union or a State."

20. Ahmadi, C.J., speaking for the Bench in the aforementioned situation opined that as, a Judge of the High Court is not a Government servant but holder of a constitutional post and, thus, Part III of the First Schedule of 1954 Act would not be applicable. Having regard to the constitutional scheme, it was held in *Pratibha Bonnerjea's* (supra) that Part I of the Schedule appended to 1954 Act would be applicable and not Part III thereof. Although the said case was decided on its own facts, the attention of the Court was not drawn to an earlier decision of this Court in *Union of India v. K. B. Khare and others* ((1994) Supp 3 SCC 502), wherein the issue in question directly arose for consideration. Upon taking into consideration the provisions of the Administrative Tribunals Act and the rules framed under Section 35(2)(c) thereof and in particular Rules 8 and 16, it was held : AIR 1996 SC 693 : 1995 AIR SCW 4713

AIR 1995 SC 771 : 1995 AIR SCW 541 : 1995 Lab IC 1063 Paras 21 and 22

"17. In our considered view, the High Court has gone wrong in considering the service in CAT as re-employment in connection with the affairs of the Union. On the contrary, an independent judicial service, the appointment in the CAT is on tenure basis. The pension relating to such post is clearly governed by Rule 8 of the Rules quoted above and at the risk of repetition, we may state it exhaustive in nature. If that be so, there is no scope for resort to Rule 16 at all. If the first respondent had to resign from Judicial Service because of the statutory requirement under Rule 5 of the Rules (quoted above), we are unable to see as to how both the services namely senior District Judge in the State Judicial Service and a Member in the CAT could be clubbed. Such a clubbing is not contemplated at all. From this point of view, we find it difficult to accept the reasoning of the High Court that the matter of option to club the two services for pension is a subject on which the Rules are silent and the residuary provision in Rule 16 of the Rules intends to fill the gap by supplementing the Rules by rules applicable to the Secretary to the Government of India.

18. Merely because while the first respondent was a Member of the State Judicial Service, he was governed by DCRB Rules of 1958, that cannot be pressed into service in view of the specific Rule 8 of the Rules. Consequently, the provisions relating to pensioners retired on invalid pension is not applicable. The Rules being unambiguous cannot be construed to confer better pensionary benefits. It is no argument to hold that had the first respondent continued in the State Judicial Service, he would have got a higher pension. There is no escape from Rule 8 of the Rules with regard to the grant of pension of Chairman, Vice-Chairman or the Members of the Tribunal. That being so, the question of liberally construing pension rules does not arise. On the same reasoning, the principle laid down in *D. S. Nakara* case is not applicable." AIR 1983 SC 130 : 1983 Lab IC 1

21. We may further notice that a three-Judge Bench of this Court in *Pasupati Nath Sukur etc. v. Nem Chandra Jain and others etc.*, ((1984) 2 SCC 404) while considering the question as to who would constitute Government servant, upon referring to the decision of this Court in *Pradyat Kumar v. Hon'ble Chief Justice of Calcutta High Court* , ((1955) 2 SCR 1331) held that the holder of a constitutional post are not eligible to contest election to Parliament and the State Legislature in view of Article 102 (1)(a) and Article 191 (1)(a) of the Constitution, as the case may be, because they are serving in connection with affairs of the Union and, therefore, are holding the office of profits under the Central Government. AIR 1984 SC 399 : 1984 All LJ 215

AIR 1956 SC 285

22. The said question came up for consideration again before a three-Judge Bench of this Court in *V. S. Mallimath v. Union of India* and another, ((2001) 4 SCC 31). The petitioner therein after his retirement as a Chief Justice of the Kerala High Court was appointed as a Chairman of the Central Administrative Tribunal and upon retirement from the said office he was appointed as a member of the National Human Rights Commission, wherein he continued till he attained the age of 70 years. One of the contentions advanced on behalf of the petitioner was that he was entitled to full salary and the benefit of gratuity for the period he rendered his service in the National Human Rights Commission. Strong reliance in support of the aforementioned contention was placed on *Pratibha Bonnerjea (supra)*. *Pattanaik, J.* (as the learned Chief Justice then was) speaking for the Bench referred to *Pashupati Nath Sukul (supra)* and approved the ratio laid down therein and rejected the contention that full salary or gratuity would be payable to the petitioner. AIR 2001 SC 1455 : 2001 AIR SCW 1298

AIR 1996 SC 693 : 1995 AIR SCW 4713

AIR 1984 SC 399 : 1984 All LJ 215

23. In *Justice Nand Lal Ganguly (supra)* Allahabad High Court proceeded to determine the matter relying on or on the basis of *Pratibha Bonnerjea* alone without considering the matter in details. Even the ratio of *Pratibha Banerjea* was mis-applied inasmuch as therein the question of clubbing of two services did not arise for consideration. For the reasons mentioned hereinbefore, *Justice Nand Lal Ganguly (supra)* cannot be held to have laid down any good law and is overruled accordingly. 1999 (4) All WC 2985

24. It may be true that this Court did not grant special leave to appeal from the judgment of *Justice Nand Lal Ganguly (supra)* but the same by itself would not render the decision as binding precedent in terms of Article 141 of the Constitution of India.

25. In *Kunhayammed and others v. State of Kerala and another*, (AIR 2000 SC 2587) this Court, inter alia, held : 2000 AIR SCW 2608, para 43

"(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties."

26. We, therefore, in agreement with the judgment of the Madras High Court are of the opinion that for the purpose of computation of pension different; services of the petitioner could not have been clubbed in terms of Act 28 of 1954. The pension payable to a High Court Judge would be only for the period rendered in that capacity which would constitute charge to the consolidated fund of India and services rendered subsequent thereto in terms of the order made by a State Government would not be charged to the consolidated fund. The question as to whether such a person would be entitled to pension from the concerned State or not would depend upon the statute or the terms and conditions of appointment.

27. For the reasons aforementioned, we are of the opinion that it is not a fit case wherein special leave to appeal should be granted. The petition is dismissed accordingly.

Petition dismissed.