

SUPREME COURT OF INDIA

N.D.P. Namboodripad

Vs

Union of India

(H. K. Sema and R.V. Raveendran, JJ)

08.03.2007

JUDGMENT

R. V. RAVEENDRAN, J.

1. These appeals by Special Leave are filed against the judgment dated 10.7.1997 in Writ Appeal No.804 of 1992 and the order dated 10.11.1997 in Review Petition No. 299/1997 passed by a Division Bench of the Kerala High Court.

2. The appellant entered the Kerala Higher Judicial Service as a directly recruited District & Sessions Judge and was later elevated as a Judge of the Kerala High Court in the year 1972. He retired on 31.7.1980 with 23 years of pensionable service which included 8 years of service as a Judge of the High Court. At the time of his retirement, the appellant was in receipt of a total emolument of Rs.4, 237/- comprising Basic Pay of Rs.3, 500/-, Dearness Allowance of Rs.437/- and Special Allowance of Rs.300/-.

3. The pension payable to High Court Judges is governed by Chapter III of the High Court Judges (Conditions of Service) Act, 1954 (for short 'the Act'). Clause (b) of sub-s. (1) of S.15 provides that every Judge who was not a member of the Indian Civil Service but has held any other pensionable post under the Union or a State, shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part III of the First Schedule. The proviso thereto and sub-s.(2) require such

Judge to exercise certain options. The appellant was governed by Part III of the First Schedule to the Act as he did not opt for pension under Part I of that Schedule. Part III of the First Schedule is extracted below :

“1. The provisions of this Part apply to a Judge who has held any pensionable post under the Union or a State (but is not a member of the Indian Civil Service) and who has not elected to receive the pension payable under Part I.

2. The pension payable to such a Judge shall be –

(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and

(b) a special additional pension of Rs. 1, 600 per annum in respect of each completed year of service for pension but in no case such additional pension together with the additional or special pension, if any, to which he is entitled under the ordinary rules of his service, shall exceed Rs. 8, 000 per annum.

Provided that the pension under clause (a) and the additional pension under clause (b) together 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.”

(Note: The special additional pension was Rs.700/- per annum and the ceiling was Rs.3500/- per annum under clause (b) and these were substituted as Rs. 1600/- and Rs.8000/-respectively with effect from 1.11.1986)

The pension payable to the appellant was fixed at Rs. 17, 300/- per annum (comprised of Rs. 13, 800/- as ordinary pension and Rs.3, 500/- as special additional pension).

4. The Government of India vide Official Memorandum dated 16.4.1987 rationalised the pension structure of the employees who retired prior to 1.1.1986. Clause 4.1 thereof provided for additional relief for existing pensioners. Clause 5 provided for calculation of pension at 50% of average emoluments in the case of pensioners whose pension was calculated under the slab formula. Clause 6.1 related to consolidation of pension and provided that the pension of existing pensioners will be consolidated with effect from 1.1.1986 by adding together (a) the existing pension, (b) the existing dearness relief and (c) the additional benefits accruing from Paras 4 and 5 of the said O. M. dated 16.4.1987. The said O. M. was not applicable to retired High Court Judges whose pension was governed by separate rules/orders and stated that necessary orders will be issued in their cases by the respective authorities.

5. By Circular dated 18.12.1987, the Government of India notified the Accountant Generals of all States that the ordinary pension admissible to High Court Judges under Para 2(a) of Part III of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954 may be revised with effect from 1.1.1986 as in the case of the employees of the Central Government permitted the respective State Governments to either adopt the said O.M or issue independent orders on similar lines, subject to the maximum stipulated in Schedule III to the Act. By order dated 19.10.1989, the Government of Kerala directed that the pension of the Judges of the High Court, who have been promoted from the State Higher Judicial Service and falling under Part III of the First Schedule to the Act, shall be revised with effect from 1.1.1986 in accordance with the rates referred to in the O.M. dated 16.4.1987 issued by the Government of India.

6. By communication dated 26.10.1989, the office of the Accountant General, Kerala, informed the Central Government (with copy endorsed to appellant) that the pension of the appellant who had opted for Part III of the First Schedule to the Act, was revised and consolidated from 1.1.1986 and 1.11.1986 as follows:

(a) Pension (including additional pension) from 1.1.1986: Rs.32, 720 p.a.

(b) Pension (including additional pension) from 1.11.1986: Rs.37, 220 p.a.

The annexure to the said letter showed the calculation of pension as follows, by treating the 'emolument' reckoned for pension as Rs.3, 500/- per month and qualifying service as 23 years:

Existing ordinary pension:

Rs. 1150/-p.m.

Revised ordinary pension (as per 50% formula):

$(3500/2)(23/30)=Rs.1342$ p.m.

Increase due to Revision:

Rs. 192/-p.m.orRs, 2304/-p.a

"Consolidation of Pension as per O.M. dt 16.4.1987

Amount Per Annum

1. Existing ordinary pension (1150x12)

Rs. 13, 800/-

2 Part consolidated ordinary pension as per Para 6.1 of O.M. dt 16.4.87 Additional relief as per para 6.1 (A) in case of pre 31.3.85 retirees (vide Col.2 of ready

reckoner): (2243x12)

Rs.26, 916/-

3. Increase due to recalculation at 50% of Pay

Rs. 2, 304/-

4. Total consolidated ordinary pension from 1.1.1986(2+3)

Rs. 29, 220/-

5. Additional pension admissible from 1.1.1986(under para 2(b) of Schedule III to the Act)

Rs. 3, 500/-

6. Total pension admissible from 1.1.1986 (4+ 5)

Rs. 32, 720/-

7. Additional pension admissible from 1.11.1986 (under para 2(b) of Schedule III to the Act)

Rs. 8, 000/-

8. Total pension admissible from 1.11.86 (4 + 7)

Rs. 37, 220/-"

7. The appellant challenged the said fixation of pension in O.P. No. 203/1990. According to him the ordinary pension ought to have been calculated, by taking the emoluments drawn at the time of retirement (Rs.4237/- per month) instead of Rs.3500. He also contended that the additional pension under para 2(b) of Part III of First Schedule to the Act should be without reference to any ceiling. A learned Single Judge allowed the said petition by order dated 12.3.1992. He held that the appellant was entitled to a pension of Rs.35, 100/- per annum (that is Rs.2, 925 x 12) from 1.1.1986 and Rs.47, 900/- per annum (that is Rs.35, 100 + Rs. 12, 800) from 1.11.1986.

8. Union of India challenged the said order of the learned Single Judge in W.A. No.804 of 1992. The said appeal was allowed by judgment dated 10.7.1997. The Division Bench set aside the order of the learned Single Judge and affirmed the pension as fixed under communication dated 26.10.1989 (extracted in para 6 above). The Division Bench purported to follow the decisions of this Court in M.L.Jain (I) \hat{A} and M.L Jain (II) \hat{A} . It, however, observed that if any excess payment had been made to the appellant on account of any wrong calculation, such excess need not be refunded by the appellant. A review petition filed by the appellant was rejected by the Division Bench by Order dated 10.11.1997.

9. The said judgment of the Division Bench and the rejection of the Review Petition, are challenged in these appeals by Special Leave. The appellant placed reliance on R.62 of Part III of the Kerala Service Rules, in support of his contention that average emolument of the appellant had to be taken as Rs.4237/- instead of Rs. 3500/ - per month for calculating the ordinary pension. In support of the contention that the special additional pension should be calculated without any ceiling, reliance was placed on M.L. Jain (III) \hat{A} .

10. This Court, by judgment dated 16.4.2004 (reported in \hat{A} held that having regard to R.62,

'emolument' for calculating pension, would include dearness allowance and other special allowances. This Court further held that the ordinary pension of appellant should be calculated by taking Rs.4237/- as the monthly emolument instead of Rs.3, 500/-. This Court also held that the special additional pension should be calculated under Clause 2(b) of Part III of the First Schedule to the Act without any ceiling, in view of the decision in M.L. Jain (III). The respondents were directed to recalculate the pension within three months and pay the arrears to the appellant.

11. Aggrieved by the first part of the judgment relating to calculation of ordinary pension based on the interpretation of R.62, the State of Kerala filed a Review Petition in R.P.(C) Nos. 1482-83/2004. The Review Petitions were allowed by order dated 1.4.2005, the judgment dated 16.4.2004 was recalled and the Civil Appeals were restored for fresh hearing. We have heard the learned counsel on both issues.

Re: Ordinary Pension:

12. The State Government contended that the term 'emolument' (for ascertaining the 'average emolument' which is the basis for determination of ordinary pension) used in R.62 of Part in of Kerala Services Rules, included only basic pay and dearness pay, if any, and did not include dearness allowance or any other allowances. It is further contended that as the appellant was not receiving any dearness pay, his last drawn basic pay of Rs.3500/- per month alone constituted the 'emolument' for calculating the pension of the appellant.

13. On the other hand, it is contended on behalf of the Appellant that the word "includes" in R.62 is not equivalent to "means" or "only includes". According to the Appellant, the word "includes" when used in the definition of a word or phrase in a Statute, enlarges the meaning of the word or phrase and such words or phrase must be construed as comprehending not only such things as they signify according to their natural meaning, but also those things which the interpretation or definition clause declares that they shall include (vide *The Regional Director, E.S.I. Corporation v. High Land Coffee Works*). The Appellant contends that 'emolument' in its natural and ordinary sense, refers to the pay and all allowances; and the inclusive definition in R.62 is intended to further expand it by specifically including 'dearness pay'. It is submitted that what is already included in the general meaning of the word 'emolument', that is dearness allowance and special allowances in addition to basic pay, could not be excluded because of the addition of some other item like 'dearness pay'. The Appellant, therefore, contends that 'emolument' for purpose of pension, consists of basic pay, dearness allowance, other allowances and dearness pay.

14. As the entire argument of the appellant is based on R.62, it is useful to extract it it reads thus :

"62. The term emolument when used in this part means the emolument which the employee was receiving immediately before his retirement and includes:

(a) pay as defined in R. 12(23) in Part I of these Rules and/or pay of the appointment under R.9 or R.31 of the Kerala State and Subordinate Service Rules.

(b) The dearness pay the employee was actually in receipt of."

R.12 (23) in Part I of the Kerala Service Rules defines 'pay' thus :

"Pay: - Means the amount drawn monthly by an officer as –

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which is entitled by reason of his position in a cadre, and

(ii) personal pay and special pay, and

(iii) Any other emoluments which may be specially classed as pay by the Government".

The appellant was not receiving any Dearness Pay. It is also not in dispute that dearness allowance and special allowance were not specially classed as 'pay' by the State Government under R.12(23). Therefore dearness allowance and special allowances, do not form part of pay. The word 'emolument' no doubt is a wider term than basic pay. It generally refers to the salary or profits from employment or office. But the word 'emolument' is not used in the general sense in the service Rules relating to pension. The word is defined for purposes of pension. In fact, all rules governing pension, define the word 'emolument' by giving a special or specific meaning, for purposes of pension calculation. Where a word is defined, there can be no reference or reliance on any general meaning. To bring in 'generality' instead of 'specificity' in defining the term 'emolument' will defeat the very purpose of defining 'emolument' for purposes of pension. Therefore, contextually the definition of 'emolument' should be specific and not 'expansive' or general.

15. The word 'includes' has different meanings in different contexts. Standard Dictionaries assign more than one meaning to the word 'include'. Webster's Dictionary defines the word 'include' as synonymous with 'comprise' or 'contain'. The Illustrated Oxford Dictionary defines the word 'include' as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. The Collins Dictionary of English Language defines the word 'includes' as : (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category, (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word 'include' is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word 'includes' is also used to connote a specific meaning, that is, as 'means and includes' or 'comprises' or 'consists of'.

16. Justice G P. Singh in his Treatise 'Principles of Statutory Interpretation', (Tenth Edition, 2006), has noticed that where a word defined is declared to 'include' such and such, the definition is prima

facie extensive, but the word 'include' when used while defining a word or expression, may also be construed as equivalent to 'mean and include' in which event, it will afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to the word or expression, (vide pages 173 and 175) referring to and relying on the decisions of this Court in *The Municipal Council, Raipur v. State of Madhya Pradesh* ^Â, *South Gujarat Roofing Tile Manufacturers Association v. State of Gujarat* ^Â, *Hindustan Aluminum Corporation v. State of Uttar Pradesh* ^Â, and *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd* ^Â. It is, therefore, evident that the word 'includes' can be used in interpretation clauses either generally in order to enlarge the meaning of any word or phrase occurring in the body of a Statute, or in the normal standard sense, to mean 'comprises' or 'consists of' or 'means and includes', depending on the context.

17. If the words 'and includes' were intended to rope in certain items which would not be part of the meaning, but for the definition, then R.62 would have specified only 'dearness pay' as the item to be included but not 'pay'. If pay, dearness allowance and other allowances were already included in 'emolument' with reference to its general or normal meaning, as contended by appellant, there was no reason to specifically again include 'pay' in R.62. Inclusion of 'pay' and 'dearness pay' and non-inclusion of 'dearness allowance or other allowances' in the definition of 'emolument' is significant. The definition in R.62 is intended to clarify that only pay and dearness pay would be considered as 'emolument' for purposes of calculating pension. The words 'and includes' have been used in R.62, as meaning 'comprises' or 'consists of'.

18. In the view we have taken, it is unnecessary to consider the following two amendments to R.62 of Part III of the Kerala Service Rules, made during the pendency of this appeal, in exercise of power conferred by S.2(1) of the Kerala Public Services Act, 1968:

(i) Substitution of the words 'comprises only' in place of 'includes' in R.62, by Kerala Service (Amendment) Rules 2004, with effect from 1.3.1997.

(ii) Further substitution of the words 'comprises only the following' in place of the words 'comprises only' in R.62 of Part III of Kerala Service Rules by Kerala Service (Amendment) Rules, 2005, with effect from 14.11.1966.

The explanatory notes to the two amendments clarify that the State Government decided to amend the Service Rules to give more clarity and to avoid ambiguity in calculating pension and the term 'emolument' for the purpose of calculation of pension will comprise of only pay and dearness pay. We have already held accordingly while interpreting unamended R.62. The amendments merely reinforce our view.

19. We, therefore, accept the contention of the State Government that R.62 does not enable the addition of clearness allowance and special allowance to the pay for purposes of pension. The 'emolument' of the appellant was rightly taken as Rs.3500/- per month. We find no error in calculation of the consolidated ordinary pension at Rs.29, 220/-.

Re: Special Additional Pension:

20. Special additional pension is provided for under Para 2(b) of Part III of first Schedule to the Act. In M.L.Jain (III) the ceiling prescribed under para 2(b) was held to be unconstitutional being violative of Article 14 of Constitution Of India, 1950. Therefore, neither the ceiling of Rs.8, 000/- introduced with effect from 1.11.1986, nor the earlier ceiling of Rs.3500/- is valid. As a consequence, the special additional pension should be taken as Rs.5, 600/- per annum (that is Rs.700 x 8) instead of Rs.3500/- from 1.1.1986 and Rs. 12, 800/- per annum (that is Rs. 1600 x 8) instead of Rs.8, 000/- from 1.11.1986 . In fact, neither Union of India, nor State Government disputes this position.

21. We, therefore, allow these appeals in part and hold as follows:

(i) That for the purpose of calculation of pension, the 'emolument' received by the appellant was Rs.3500/- per month and not Rs.4, 237/-. Consequently, determination of consolidated ordinary pension as Rs.29, 220/- per annum from 1.1.1986 is upheld.

(ii) As the ceiling on the amount to be added under clause 2(b) of Part III of First Schedule to the Act is invalid, the special additional pension per annum would be Rs.5600/- per annum from 1.1.1986 and Rs. 12, 800/-per annum from 1.11.1986 in the case of appellant.

(iii) Therefore, the total pension was Rs.34, 820/- p.a. from 1.1.1986 and Rs. 42, 020/- per annum from 1.11.1986.

22. We direct that the pension due be recalculated and settled accordingly. If any excess payment has been made to the appellant, it shall not, however, be recovered from the Legal Representatives of the deceased appellant. Parties to bear their respective costs.