

SUPREME COURT OF INDIA

Accountant General, M.P.

Vs.

S.K. Dubey

C.A.No.5322 of 2005

(R.M. Lodha and H.L. Gokhale JJ.)

29.02.2012

JUDGMENT

R.M. LODHA, J.

1. The Accountant General, Madhya Pradesh is in appeal, by special leave, aggrieved by the judgment and order dated February 8, 2005 passed by the High Court of Madhya Pradesh at Jabalpur in the writ petition filed by the respondent in that Court.

2. The respondent is a former Judge of the Madhya Pradesh High Court. He was appointed on March 2, 1998. He rendered service of more than 10 years and retired on August 13, 1998.

3. By a notification issued on September 18, 1998, the respondent was appointed as the President, State Consumer Disputes Redressal Commission, Madhya Pradesh (for short, `State Commission') established under clause (b) of Section 9 of the Consumer Protection Act, 1986 (for short, `1986 Act'). The respondent assumed office on September 21, 1998 and continued to hold that office until the end of the working hours on August 12, 2003. When he demitted the office of the President, State Commission, he had rendered service of 4 years 10 months and 22 days as President, State Commission.

4. The pension for the period of service rendered by the respondent as Judge of the High Court has been determined under the First Schedule of the High Court Judges (Salaries and Conditions of Service) Act, 1954 (for short, `1954 Act'). That is not the controversy here. The respondent's entitlement to pension for his service

rendered as President, State Commission under the office order dated April 5, 2002 issued by the State Government is in issue.

5. By order dated June 3, 1999, the Department of Food, Civil Supplies and Consumer Protection, Government of Madhya Pradesh addressed to the President, State Commission prescribed the terms and conditions of the appointment of the respondent as President, State Commission. Inter alia, it provided that during the currency of his appointment, the respondent shall be paid salary as payable to a Judge of the High Court minus pension payable.

6. On April 5, 2002, the Department of Food, Civil Supplies and Consumer Protection, Government of Madhya Pradesh issued another order for counting the period of service as President, State Commission for the purposes of payability and determination of the pension. It provided as follows:

In continuation of Departmental Order of even No. F.5-24/96/2 dated 03-06-99 the State Government now accords sanction for counting the services of the post of President Madhya Pradesh State Consumer Dispute Redressal Commission, Bhopal for pension provided that the pension on this post and the pension received earlier from the State Government or Central Government the two pensions combined together shall not exceed the maximum of the pension prescribed for judges of honourable High Court.

2. This sanction has been endorsed to the Accountant General M.P. Gwalior vide Finance Department endorsement No. 553/853/2002/C Char dated 5.4.2002.

By order and in the name of Governor of Madhya Pradesh.

7. It is the case of the respondent that in accordance with the above orders of the State Government, the necessary papers for payment of pension and gratuity to the respondent were prepared in the prescribed form and submitted to the office of the Accountant General, Madhya Pradesh (appellant) on August 29, 2003 by the Registrar of the State Commission. The Department of Food, Civil Supplies and Consumer Protection, Government of Madhya Pradesh also recommended and forwarded the pension case of the respondent to the appellant.

8. The appellant, however, raised the objection that pension and gratuity were not payable to the respondent as proposed and recommended. The correspondence ensued between the appellant and the Department of Food, Civil Supplies and

Consumer Protection, Government of Madhya Pradesh. The appellant reiterated its position that pension and gratuity were not payable to the respondent for the period he served as the President, State Commission.

9. The above position taken by the appellant compelled the respondent to file a writ petition before the High Court challenging the letters dated December 10, 2003 and September 23, 2004 addressed to the Madhya Pradesh State Government and letter dated November 4, 2004 addressed to the respondent that pension and gratuity were not payable to the respondent. In that writ petition, the appellant and the State of Madhya Pradesh were impleaded as respondent - 1 and respondent - 2 respectively. In its counter affidavit in opposition to the writ petition, the appellant set up the case that there was no provision for pension under the 1986 Act or the Madhya Pradesh Consumer Protection Rules, 1987 (for short, 'State Rules') for payment of pension to the President, State Commission. Relying upon the decision of this Court in the case of Justice P. Venugopal v. Union of India and Others¹, the appellant stated before the High Court that the respondent was not entitled to clubbing of the two services. The appellant said that if the State Government intended to grant pension to the petitioner (respondent herein) for the service rendered by him as President, State Commission then requisite statutory rule would have to be framed and duly ratified by the State Legislature as required under Section 30(2) of the 1986 Act. The State Rules framed by the State Government do not have any provision for payment of pension.

10. The High Court of Madhya Pradesh, on consideration of the matter, vide its judgment dated February 8, 2005 allowed the writ petition filed by the present respondent. The High Court held that by office order dated April 5, 2002, the State Government had passed an order that the service rendered by the petitioner (respondent herein) as President, State Commission 1 (2003) 7 SCC 726 would be counted as pensionable service. The High Court, accordingly, did not accept the view of the appellant and directed it to finalize the pension of the petitioner (respondent herein) and make payment of pension and other admissible dues within a period of two months.

11. It is from this order that the present appeal has arisen.

12. This Court granted leave in the matter on August 25, 2005 but refused to grant any stay. It was, however, clarified that the payment made to the respondent, pursuant to the judgment of the High Court, would be subject to the decision in the appeal.

13. We have heard Mr. A. Mariarputham, learned senior counsel for the appellant and Mr. Amrendra Sharan, learned senior counsel for the respondent.

14. Mr. A. Mariarputham, learned senior counsel referred to Sections 2(jj), 2(h), 16(2), 30(2) and 31 of the 1986 Act and submitted that there was no statutory provision for grant of pension to the President of the State Commission. The State Rules, learned senior counsel would submit, do not make any provision for pension to the President of the State Commission and, therefore, no order for payment of pension to the respondent could have been passed. He argued that when an act is required to be done in a particular manner, then it must be done in that manner and in no other manner. In this regard, he relied upon the decisions of this Court in *State of Uttar Pradesh v. Singhara Singh and Others*², *Chandra Kishore Jha v. Mahavir Prasad and Others*³, *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. and Another*⁴ and *Tamilselvan v. State represented by Inspector of Police, Tamil Nadu*⁵.

15. Mr. Amrendra Sharan, learned senior counsel for the respondent raised the preliminary objection of the maintainability of the appeal at the instance of the appellant. He submitted that the appellant was not an 'aggrieved person' and, therefore, appeal was not maintainable. He relied upon the rulings of this Court in *Bar Council of Maharashtra v. M.V. Dabholkar and Others*⁶, *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed and Others*⁷ and *Thammanna v. K. Veera Reddy and Others*⁸.

16. With reference to Article 162 of the Constitution of India, learned senior counsel for the respondent submitted that executive power of the State was coextensive with the legislative power and when rules are silent, the executive can always fill the gaps by issuing executive order. In this regard, he relied upon decisions of this Court in *Sant Ram Sharma v. State of Rajasthan and Others*⁹ and *Lalit Mohan Deb and Others v. Union of India and Others*¹⁰.

2 AIR 1964 SC 328 3 (1999) 8 SCC 266 4 (2005) 7 SCC 234 5 (2008) 7 SCC 755 6 (1975) 2 SCC 702 7 (1976) 1 SCC 671 8 (1980) 4 SCC 62

17. Mr. Amrendra Sharan, learned senior counsel for the respondent argued that the use of words 'shall' and 'may' in Section 16(2) was indicative of the legislative intention that 'may' be read as directory. He submitted that firstly, framing of rules by the State Government under Section 16(2) read with Section 30(2) was not mandatory and secondly, the State Rules having been framed for the subjects enumerated in Section 16(2), the power of the State Government to exercise its

executive power in respect of the subjects not provided in the State Rules is not taken away. He relied upon the decisions of this Court in *Control of Pollution) Board v. Orient Paper Mills and Another*¹² and *Delhi Airtech Services Private Limited and Another v. State of Uttar Pradesh and Another*¹³.

9 AIR 1967 SC 1910 10 (1973) 3 SCC 862 11 (1979) 2 SCC 196 12 (2003) 10 SCC 421 13 (2011) 9 SCC 354

18. In rejoinder, Mr. A. Mariarputham, learned senior counsel submitted that appeal was maintainable at the instance of appellant. According to him, the appellant, Accountant General, Madhya Pradesh, is one of the arms of the Comptroller and Auditor General -- a constitutional functionary - which monitors and controls all activities connected with audit, accounts and entitlement functions of the Indian Audit and Accounts Department. He submitted that authorizing pension was the function of the appellant. In this regard, he referred to material titled 'Supreme Audit Institution of India - A Brief Introduction' to show that there are 29 offices of the Accounts and Entitlements (AE) headed by Accountants General (A E) engaged in maintaining accounts of the State Governments and authorizing GPF and pension payments of their employees. Learned senior counsel submitted that for maintaining the appeal under Article 136 of the Constitution before this Court, it was not necessary that the appellant must be an 'aggrieved person'. In any case, the appellant was impleaded as respondent 1 in the writ petition and it was the appellant's action that was challenged in the writ petition before the High Court and, therefore, the appeal was maintainable.

19. Initially I thought of considering the preliminary objection but since an important question relating to the power of the State Government in making the service rendered by the respondent as President of the State Commission pensionable by an Executive order although State Rules are in place, has been raised and which I intend to decide, I do not think it necessary to consider the preliminary objection.

20. I shall first refer to the legal position expounded by this Court in the case of Justice P. Venugopal. The question for consideration in that matter was as to whether the period during which Justice P. Venugopal served as the Commission of Inquiry or as the Commissioner of Payments under the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 could be taken into consideration for computing the pensionary benefits. This Court, while dealing with the above question, referred to constitutional provisions, namely, Articles 112(3)(d)(iii), 217(1), 221 and 224A, the provisions contained in the 1954 Act,

particularly, Sections 14, 15 and 16 thereof and the First Schedule appended thereto and decisions of this Court in *Union of India and Others v. Pratibha Bonnerjea and Another*¹⁴ and *V.S. Mallimath v. Union of India and Another*¹⁵ and held that a High Court Judge was entitled to pensionary benefits only in terms of the 1954 Act and not otherwise. The Court went on to observe (para 16; pgs. 732-733):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. In para 26 of the Report (Pg. 736), this Court said :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 State concerned or not would depend upon the statute or the terms and conditions of appointment.

14 (1995) 6 SCC 765 15 (2001) 4 SCC 31

21. In view of the above legal position, there is no doubt that for the purposes of computation of pension payable to the respondent his different services, namely, service as a Judge of the High Court and service as President, State Commission cannot be clubbed. The respondent is entitled to pension as a High Court Judge only for the period rendered by him in that capacity. The subsequent service rendered by him as President, State Commission cannot be charged to the Consolidated Fund of India. This position was not disputed by the respondent in the High Court nor it is disputed before me. The question is, whether respondent is entitled to pension from the State of Madhya Pradesh for the service rendered by him as President of the State Commission of that State.

22. The High Court has recorded in paragraph 15 of the impugned order as follows:

15. In the instant case, it is not in dispute that State Govt. has made it a part of condition of appointment of petitioner/Justice S.K. Dubey as per Order (P. 2) dated 5th April, 2002 that service rendered by him as President of the

State Commission is to be counted as pensionable service modifying Order (P. 1) dated 03.06.1999. Thus, Order (P. 2) forms part of condition of appointment of petitioner that it was further ordered that pension payable by the State Govt. or from the Consolidated Fund of Govt. of India shall not exceed the maximum pension payable to a High Court Judge.....

23. The above statement has not been disputed by Mr. A. Mariarputham. The argument of Mr. A. Mariarputham is that the State Government of Madhya Pradesh in exercise of the power conferred by sub-section (2) of Section 30 of the 1986 Act has framed the State Rules for the subjects enumerated therein including Section 16(2). Rule 6 thereof provides for salary and other allowances and terms and conditions of the President and Members of the State Commission. The said Rule does not provide that service of the President, State Commission is a pensionable service and, therefore, despite the office order dated April 5, 2002 issued by the State Government to the effect that service rendered by the respondent as President of the State Commission was pensionable service, the respondent is not entitled to any pension for the service he rendered as President, State Commission.

24. Section 16 of the 1986 Act deals with the composition of the State Commission. For the present purposes, the only relevant provision is sub-section (2) of Section 16 which reads as follows:

S. 16. Composition of the State Commission.-- (1) xxx xxx xxx xxx (2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole- time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

(3) xxx xxx xxx xxx (4) xxx xxx xxx xxx

25. Section 2(jj) defines 'member' as follows : S.2(jj) member includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;

26. Wherever the word 'prescribed' occurs in the 1986 Act, by virtue of Section 2(n), it means prescribed by rules made by the State Government, or as the case may be, by the Central Government.

27. Section 30 deals with the power of the Central Government and the State Government to make rules. As I am concerned with power of the State Government, sub-section (2) of Section 30 is reproduced which reads:

S. 30. Power to make rules.--

(1) xxx xxx xxx xxx (2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, clause (b) of sub-section (2) and sub-section (4) of section 8A, clause (b) of sub-section (1) and sub-section (3) of section 10, clause (c) of sub-section (1) of section 13, clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act..

28. Section 31 makes a provision that rules and regulations made under the 1986 Act shall be laid before each House of Parliament. It reads as under:

S. 31.- Rules and regulations to be laid before each House of Parliament. -

(1) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(2) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

29. As noticed above, in the State Rules framed by the Madhya Pradesh State Government, provision has been made in Rule 6 with regard to salary and other allowances and terms and conditions of the President and Members of the State

Commission. Rule 6 of the State Rules reads as under : R.6.- Salary and other allowances and terms and conditions of the President and Members of the State Commission :-

- (1) President of the State Commission shall receive the salary of the Judge of the High Court, if appointed on whole-time basis or a consolidated honorarium of Rs. 200/- per day for the sitting if appointed on part-time basis. Other members, if sitting on whole-time basis, shall receive a consolidated honorarium of Rs. 3,000 per month and if sitting on part-time basis, a consolidated honorarium of Rs. 150 per day for the sitting.
- (2) The president and the members of the State Commission shall be eligible for such travelling allowance and daily allowance on official tour as are admissible to grade 1 Officer of the State Government.
- (3) The salary, honorarium, other allowances shall be defrayed out of the Consolidated Fund of the State Government.
- (4) President and the Members of the State Commission shall hold office for a term of five years or up to the age of 67 years whichever is earlier and shall not be eligible for re-nomination:

Provided that President and / or Members may:

- (a) by writing under his hand and addressed to the State Government resign his office any time;
 - (b) be removed from his office in accordance with provisions of sub-rule (5).
- (5) The State Government may remove from office, President or any Member of the State Commission who,-
- (a) has been adjudged an insolvent; or
 - (b) has been convicted of an offence which in the opinion of the State Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

(f) is absent himself from five consecutive sittings of the Commission, except for a reasonable cause.

Provided that the President or a Member shall not be removed from his office on the ground specified in Clauses (d) and (e) of sub-rule (5) except on an inquiry held by State Government, in accordance with such procedure as it may specify in this behalf and finds the Member to be guilty of such ground.

(6) Before appointment, President and a Member of the State Commission shall have to take an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

(7) The terms and conditions of the service of the President and the Members of the State Commission shall not be varied to their disadvantage during their tenure of office.

(8) Every vacancy caused by resignation and removal of the President or any other Member of the State Commission under sub-rule (4) or otherwise shall be filled by fresh appointment.

(9) Where any such vacancy occurs in the office of the President of the State Commission, the senior-most (in order of appointment) Member, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the State Commission.

(10) When the President of the State Commission is unable to discharge the functions owing to absence, illness or any other cause, the senior-most (in order of the appointment) Member of the State Commission shall discharge

the functions of the President until the day on which the President resumes the charge of his functions.

(11) The President or any Member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organization which have been subject of any proceeding under the Act during his tenure for a period of five years from the date on which he ceases to hold such office.

30. It is clear from the above Rule that it does not make any provision in making the service of the President and Members of the State Commission a pensionable service. State Rules are totally silent in this regard. The moot question that falls for determination in this appeal is, whether in the absence of any express rule in the State Rules, was it open to the State Government of Madhya Pradesh to have provided by way of an Executive order dated April 5, 2002 that the service rendered by the respondent as President of the State Commission would be counted as pensionable service. The incidental question is whether such order is inconsistent with Section 16(2) or the State Rules.

31. Subject to the provisions of the Constitution, the executive power of a State extends to the matters with respect to which the Legislature of the State has power to make laws. This is what is provided in Article 162 of the Constitution. In other words, the executive power of the State Executive is coextensive with that of the State Legislature.

32. In the case of Sant Ram Sharma⁹ this Court negated the arguments advanced on behalf of the appellant therein that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the rules already framed. The Court stated:It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

33. The above legal position has been followed and reiterated by this Court time and again. The Constitution Bench of this Court in Lalit Mohan Deb¹⁰ (para 9; pg. 867) said: 9. It is true that there are no statutory rules regulating the selection of Assistants to the selection grade. But the absence of such rules is no bar to the

Administration giving instructions regarding promotion to the higher grade as long as such instructions are not inconsistent with any rule on the subject.....

34. In *Union of India and another v. Central Electrical and Mechanical Engineering Service (CEMES) Group `A' (Direct Recruits) Association, CPWD and others*¹⁶, this Court held that the executive instructions could fill in gaps not covered by rules but such instructions cannot be in derogation of the statutory rules.

35. The statutory provision contained in Section 16(2) is quite clear. It provides that the salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government. The term `member' includes the President of the State Commission. That pension can be made a condition of service is beyond any question. What is the meaning of the expression, `as may be prescribed by the State Government' occurring in Section 16(2).

36. In my opinion, the expression `as may be prescribed by the State Government' in Section 16(2) has to be read as prescribed by the rules framed by the State Government, if any. This is the plain meaning of the above expression. If the Parliament 16 (2008) 1 SCC 354 intended that salary or honorarium and other allowances and other terms and conditions of service of the President and the Members of the State Commission have to be provided in the rules by the State Government in exercise of its powers under Section 30(2) and in no other manner, the provision in Section 16(2) would have read, `the salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the State Commission shall only be in accordance with the rules framed by the State Government'. The words `shall be such' followed by the expression `as may be prescribed' clearly indicate the legislative intent of `may' being directory and the expression `as may be prescribed' to mean, 'if any'. The construction that I have put to the expression, 'as may be prescribed' gets support from the decisions of this Court in *Surinder Singh v. Central Government and others*¹⁷ and *Orissa State (Prevention and Control of Pollution) Board*¹² .

37. In *Orissa State (Prevention Control of Pollution) Board*¹², this Court was seized with the question, whether as long as the manner is not prescribed under the Rules for declaration of an area as the air pollution control area, the valid notification under Section 19 of the Air (Prevention and Control of Pollution) Act, 1981 could be published in the official gazette or not. Section 19 under 17 (1986) 4 SCC 667 consideration read, `the State Government may, after consultation with

the State Board, by notification in the Official Gazette, declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of this Act'. Section 2(n) of that Act defines the word 'prescribed' which means prescribed by rules made by the Central Government or, as the case may be, the State Government. Section 54 of that Act provides for power of the State Government to make rules. In light of these provisions and few decisions of this Court viz; another¹⁸ and Surinder Singh¹⁷, the Court considered the expression 'as may be prescribed' and held that this expression means 'if any'. This is what this Court said (para¹²; pg. 429):

. . . . In one of the cases decided by this Court, to be referred later in this judgment as may be prescribed has been held to mean if any. It is thus clear that such expression leaves the scope for some play for the workability of the provision under the law. The meaning of the word as takes colour in context with which it is used and the manner of its use as prefix or suffix etc. There is no rigidity about it and it may have the meaning of a situation of being in existence during a particular time or contingent, and so on and so forth. That is to say, something to happen in a manner, if such a manner is in being or exists, if it does not, it may not happen in that manner. Therefore, the reading of the provision under consideration makes it clear that manner of declaration is to be followed as may be prescribed i.e. if any prescribed.

38. I am of the considered view that there is no 18 AIR 1961 SC 276 difference in the legal position in a case where power conferred on the State Government for framing rules has been exercised but such rules remain silent on certain aspects although it had power to make rules with regard to those aspects and in the situation where no rules have been framed in exercise of the power conferred on it, insofar as executive power of the State is concerned. The power that vests in the State Government in Section 30(2) to carry out the provisions contained in Section 16(2) does not take away its executive power to make provision for the subjects covered in Section 16(2) for which no rules have been framed by it. The exercise of such power by the State Government, obviously, must not be inconsistent with the constitutional provisions or statutory provision in Section 16(2) or the State Rules framed by it. In the present case, the exercise of power by the State Government by issuance of the order dated April 5, 2002 does not suffer from any such vice.

39. Two more aspects need to be considered by me, firstly, the effect of Section 31(2) of the 1986 Act which provides that every rule made under the 1986 Act shall be laid before the State Legislature and secondly, whether in view of Section

31(2), the executive power of the State is to be exercised in generality and not for a situation specific.

40. Craies on Statute Law, Seventh Edition, has dealt with the subject, 'Laying before Parliament' in Chapter 13 under the title 'Delegated Legislation'. The author has observed that the requirement for 'laying' first appeared in the 1830s. According to the author, there are three kinds of laying, (i) laying without further procedure: (ii) laying subject to negative resolution: and (iii) laying subject to affirmative resolution. The above three kinds of 'laying' have been then explained. This Court approved the observations made by Craies on Statute Law in respect of the subject 'laying before Parliament' in *Hukam Chand Etc. v. Union of India and others*¹⁹.

41. As to whether the laying of rules and regulations before the Parliament is mandatory or directory or whether laying is a condition precedent to their operation or be neglected without prejudice to the effect of the rules, it is now well settled that each case must depend on its own circumstances or the wording of the statute under which the rules are made. This Court had an occasion to deal with the policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament with reference to 19 (1972) 2 SCC 601 Section 3(6) of the Essential Commodities Act, 1955, in the case of *M/s. Atlas Cycle Industries Ltd.*¹¹. Section 3(6) under consideration read, 'every order made under this Section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament as soon as may be, after it is made'. In *M/s. Atlas Cycle Industries Ltd.*¹¹, a three-Judge Bench of this Court referred to the observations made in the *Craies on Statute Law* and also the decisions of this Court in *and Another*²⁰ and *Narendra Kumar and Others v. The Union of India and Others*²¹ and held as under:

32. From the foregoing discussion, it inevitably follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub-section (6) of Section 3 of the Act should render the order void. Consequently non-laying of the aforesaid notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification.....

42. In light of the above legal position, if Section 31(2) of the 1986 Act is seen, it leaves no manner of doubt that the said provision is directory.

43. I am unable to accept the submission of Mr. A. Mariarputham that having regard to the provision contained in 20 (1966) 1 SCR 505 21 (1960) 2 SCR 375 Section 31(2), the executive power of the State Government to fill in the gaps in the rules can only be exercised in generality.

44. It follows from the above discussion that the State Government has power to issue executive order or administrative instructions with regard to subject/s provided in Section 16(2) of the 1986 Act where the State Rules are silent on any of such subject. There is nothing in Section 30(2) or Section 31 of the 1986 Act that abridges the power of the State Government to issue executive order or administrative instructions with regard to pensionable service of the President and Members of the State Commission, although State Rules have been framed but such Rules are silent on the aspect of the pensionable service. In other words, in the absence of any provision in the State Rules relating to the pensionable service of the President and Members of the State Commission, there is no bar for the State Government in issuing executive order or administrative instructions regarding pensionable service of the President, State Commission.

45. Insofar as the order dated April 5, 2002 issued by the Government of Madhya Pradesh according sanction for counting the service of the respondent on the post of President, State Commission for pension is concerned, the same being not inconsistent with the statutory provision contained in Section 16(2) and the State Rules, the view of the High Court that the respondent was entitled to pension from the State Government as per the terms and conditions of appointment cannot be faulted. The High Court rightly observed that the respondent was entitled to pension from the State Government insofar as service rendered by him as the President, State Commission was concerned to the extent provided in the order dated April 5, 2002. Obviously such service shall not be clubbed with the service of the respondent as a High Court Judge and shall not be charged to Consolidated Fund of India.

46. Civil appeal, accordingly, has no merit and is dismissed with no order as to costs.

JUDGEMENT

H.L. GOKHALE J.

I have had the advantage to go through the erudite judgment prepared by my Brother Lodha J., though for the reasons respectfully indicated below, I am not in a position to agree therewith.

2. The short question in this appeal is as to whether the first respondent who functioned as the President of the Consumer Disputes Redressal Commission, in Madhya Pradesh (State Commission for short) for a period of about 4 years and 11 months, after his retirement as a High Court Judge, was entitled to receive pension for this subsequent period in the absence of any specific provision therefor in the rules framed under the Consumer Protection Act, 1986 (The Act for short). The ancillary question is as to whether the second respondent i.e. State of Madhya Pradesh could grant pension for this period by issuing an executive order.

3. The broad facts and the statutory provisions relevant to this case have been referred to in my Brother's judgment and therefore I am not repeating them, though I may refer to some of the essential facts and relevant provisions. Short facts leading to the present appeal

4. The first respondent herein, retired as a Judge from the Madhya Pradesh High Court on 13.8.1998 after putting in a service of more than ten years. He was appointed as the President of the State Commission after a short gap on 21.9.1998 vide Government notification dated 18.9.1998. Thereafter, he worked for a period of four years, ten months and twenty two days as the President, and demitted that office on 12.8.2003.

5. The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the State Commission (which include the President) are governed under the above Act. The terms and conditions of appointment of the first respondent were determined under the Government's letter/order dated 26.5/3.6.1999, which included the following terms:-

(i) The period of appointment shall be in accordance with Section 16(3) of Consumer Protection Act, 1986.

(ii) During the period of appointment he shall get pay equal to the pay payable to Judge of High Court after deducting the pension. The relief on pension shall not be payable to him in terms of Finance Department Office Memorandum No. E-4-Char-79-Ni-5-84 dated 20.10.1984.

(iii) The allowances and other perquisites at par with Judge of the High Court shall be made available to him. Thus, it was clear that during this period he was to receive a pay equal to his pay as a High Court Judge after deducting the amount of pension for the services rendered as a High court Judge. The relief on pension was also not payable to him. The allowances and other perquisites were to be made available to him at par with a Judge of a High Court. Thus, it was an appointment for a tenure with specific terms which did not include pension.

6. Later, on 5.4.2002, the Government of Madhya Pradesh issued an order according sanction for counting the period of his service as the President of the State Commission for the purpose of payability and determination of pension. The order included a proviso as follows:

provided that the two pensions combined together shall not exceed the maximum of the pension prescribed for Judges of the Hon'ble High Court.

7. After the tenure of the first respondent was over, he submitted his pension papers to the office of the appellant on 29.8.2003 in Form 6 (Form for assessing pension and gratuity). Clauses 18 and 19 thereof read as follows:-

18 Proposed pension : Rs. 13,000/-p.m. + DA or Rs. 1,56,000/- p.a. + DA

19 Proposed death-: Rs. 1,38,333=00 (as per calculation cum-retirement sheet) gratuity

The calculation sheet enclosed therewith was as follows:- CALCULATION SHEET

Calculation sheet of amount of Pension and Death-cum- retirement Gratuity Payable to Hon'ble Justice Shri S.K. Dubey, President M.P. State Consumer Disputes Redressal Commission, Bhopal as per present Scale.

Date of Birth 14.8.1936 31

Date of appointment and joining

as Judge of High Court 2.3.1988 Date of appointment as permanent

Judge 4.8.1989 Date of retirement as High Court 14.8.1998 F.N. Judge

Date of appointment as President,

M.P. State Consumer Disputes

Redressal Commission, Bhopal 21.9.1998 F.N. Total Service

As High Court Judge 2.3.1988 to 14.8.1998 F.N. Year Month Day

10 5 12

Service as President of 21.9.1988 to 13.8.2003 M.P. State Consumer 4 10 22
Disputes Redressal Commission

Total 15 4 04 Amount of Pension under Part-I of the High Court Judge
(Conditions of Service) Act 1954 and as per Government of India Ministry
of Law and Justice Department of Justice Dt. 18.12.1987 and 11.4.1988

Rs. 11,150 X 15 = 167250 = Rs. 13937.50p

Maximum is Rs. 13,000/- P.M. OR Rs. 1,56,000/- P.A. Amount of Death-
cum-Retirement Gratuity including 55% D.A. as per instructions.

Pay Rs. 26,000+ 55% of D.A 14,300 40,300 X 20 X 15 = 4,03,000 Total Rs.
30,3000/- 30 X 1

Maximum limit of DCRG Rs. 3,50,000=00 Less already paid Rs.
2,11,667=00 Balance to be paid Rs. 1,38,333=00 family pension:- w.e.f.
14.8.2003 of Rs. 78,000 per month (or per annum?) to Smt. Manju Dubey,
wife of Hon'ble Justice Shri S.I. Dubey till her death or remarriage
whichever is earlier.

8. The appellant raised certain queries with respect thereto by his letter dated 10.12.2003. It was stated in this letter that according to the pension calculation sheet submitted on behalf of the first respondent, the pension of first respondent had been revised by adding his service as the President to the service rendered by him as a High Court Judge, and the same was not in accordance with law. It was pointed out that there was no provision in the Consumer Protection Act, 1986 about the admissibility of pension. Besides, a clarification was sought on the following three points:-

- (i) The rate at which the pension is to be calculated for each year of service.
- (ii) Relief on pension is admissible or not, if admissible then as per rules applicable to the State Government, Central Government/Judges of High Court.
- (iii) In the order for counting the said services, there is no mention about admissibility of gratuity and commutation of pension.

It was also pointed out that it was not proper to revise the pension of the first respondent as sanctioned by the President of India without amendment in the High Court Judges (Conditions of Service) Act, 1954. The pension papers were therefore returned.

9. This led to further correspondence between the appellant and the first respondent. Appellant recorded in his letter dated 23.9.2004, that the case of the first respondent was referred to the Central Ministry of Law and Justice which had replied by their letter dated 9.9.2002, alongwith a copy of the judgment of this Court in SLP No. 15450/2003 i.e. Justice P. Venugopal Vs. Union of India [reported in 2003(7) SCC 726] which held that for the purpose of pensionary benefits, the period undergone as a High Court Judge cannot be clubbed with an additional period to refix the pension. The same position is reiterated by the appellant in his subsequent letter dated 4.11.2004 addressed to respondent No. 1. These three letters/orders were challenged by the first respondent in a writ petition to the Madhya Pradesh High Court (W.P. No.13302/2004) which has allowed that petition by the impugned judgment and order dated 8.2.2005. The High Court has noted that this additional liability is being undertaken by the State Government, and it is not be drawn from the Consolidated Fund of India, and that it is not to exceed the maximum pension payable to a High Court Judge and therefore would be valid.

The submissions by the rival parties

10. The learned counsel for the first respondent Mr. Amrendra Sharan raised an objection to the maintainability of the appeal at the instance of the appellant. It was contended that since his decision was challenged, the appellant is not expected to agitate it further. In this connection, we must note that the appellant was joined as the first respondent in the Writ Petition in the High Court. He is in charge of the accounts in the State and represents the Comptroller and Auditor General of India,

who is a Constitutional Functionary. The payment of pension and its supervision is a part of his responsibility. His letters/orders were challenged in the writ petition, and if it was his view that the decision of the High Court was erroneous, we do not see any reason as to why he should not be held eligible to challenge the decision. He is an administrative authority and his decision was approved by the Ministry of Law and Justice. Such petitions have been filed by the Accountant Generals in the past also. [For reference in the case of Accountant General of Orissa Vs. R. Ramamurthy reported in 2006 (12) SCC 557.] Hence we do not find any substance in this objection.

11. The principal submission on behalf of the appellant is based on Section 16(2) of the Act, which reads as follows:-

16. Composition of the State Commission.....

(1)

(2) The salary or honorarium and other allowances payable to, and other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government. The definition of a 'member' under Section 2(jj) of the act includes the President of the State Commission, and the term 'prescribed' has been defined in Section 2 (n) as follows:- 2(n). prescribed means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act.

Section 30 which lays down the power of the Central Government or that of the State Government to make the rules, specifically provides under Sub-section (2) that amongst others, the State Government may by a notification make rules for carrying out the provisions of Sub-section (2) of Section 16 of the Act. This being so, whatever is prescribed in the rules are the various terms and conditions of service, for the members of the State Commission. This does not mean that the State Government cannot frame additional rules either granting pension or other benefits. However, wherever it is done without framing rules, it will be difficult to say that it is authorized by the statute.

12. As far as the rules in this behalf viz. The Madhya Pradesh Consumer Protection Rules, 1987 are concerned, there is no difficulty in noting that the rules do not

provide for pension either to the President or to the members. Rules 6 (1) to (3) thereof are the relevant rules in this behalf. They read as follows:-

6. Salary and other allowances and terms and conditions of the President and Members of the State Commission.

1. The President of the State Commission shall receive salary of the High Court if appointed on whole time basis or a consolidated honorarium of Rs.200 per day for the sitting if appointed on part time basis. Other members, if sitting on whole time basis, shall receive a consolidated honorarium of Rs.150 per day for the sitting.

2. The President and the Members of the State Commission shall be eligible for such travelling allowance and daily allowance on official tour as are admissible to grade I Officer of the State Government.

3. The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government.

13. The submission of Mr. Mariarputham, learned Senior Counsel for the appellant has been that the appellant is required to read and implement these provisions as they are. The section clearly provides that the terms and conditions of service of the member (including President of the Commission) will be as prescribed by the State Government. 'Prescribed' means as laid down in the rules. Section 31 of the Act requires that these rules are to be laid before the legislature. Since the rules do not provide for pension, one cannot incorporate any such concept in the service conditions of the first respondent. Mr. Mariarputham, relied upon the judgment of this Court in the case of State of Uttar Pradesh Vs. Singhara Singh reported in AIR 1964 SC 358, and particularly first part of paragraph 8 thereof which reads as follows:-

8. The rule adopted in Taylor V. Taylor (1876) 1 Ch. D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.....

14. As against the submission on behalf of the appellant, it has been submitted by Mr. Amrendra Sharan, learned Senior Counsel appearing for the first respondent, that in the present case the rules are silent about the provision for pension. It cannot however mean that the State Government cannot on its own grant pension by issuing an executive order under Article 162 of the Constitution of India. He relied upon the judgment of this Court in Sant Ram Sharma Vs. State of Rajasthan reported in AIR 1967 SC 1910 in this behalf. A strong reliance was also placed on the judgment of this Court in the case of Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills reported in 2003 (10) SCC 421, particularly paragraph 12 thereof, to explain the phrase `as may be prescribed'. It was therefore submitted that where the rule is silent, it cannot mean a restriction on the exercise of the executive powers of the State, which it has exercised in the present case.

Consideration of the rival submissions

15. Article 162 of the Constitution, lays down the extent of the executive power of the State in following terms:- 162. Extent of executive power of State Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

This Article does lay down in its principal part that the executive power of the State shall extend to the matters with respect to which the Legislature of a State has the power to make laws. It is however important to note that the proviso to this Article lays down that in such matters the executive power of the State shall be subject to and limited by the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. In the instant case, the State Govt. has been expressly given the power under Section 30 (2) to make rules for carrying out the provisions of Section 16 (2) of the act. The State has therefore to exercise its executive power subject to and as limited by this law meaning thereby in conformity therewith.

16. When the statute provides that the `terms and conditions shall be such as may be prescribed, and `prescribed' means prescribed by the rules, it is implied that these rules shall be of general application. If pension is to be covered under the concept of terms and condition of service under Section 16 (2), there has to be a general rule concerning the same. Pension denotes a periodical payment to be made available to the employee after his retirement, after long years of service which are governed by the relevant rules [Ref. Pepsu Road Transport Corporation, Patiala Vs. Mangal Singh reported in 2011 (11) SCC 702]. In the instant case, there are general rules laying down the terms and conditions framed under the concerned statute but they do not make any provision for pension. As far as the grant of pension is concerned, in his first letter dated 10.12.2003, the appellant raised the issue with respect to the rate at which the pension is to be calculated. Mr. Mariarputham, submitted that if the service in the consumer commission is not to be clubbed, and even if the State Government is to bear the responsibility, it will also have to be provided as to how many years of service in the commission will qualify for pension. It is not enough merely to provide that the two pensions combined together shall not exceed the maximum of the pension prescribed for Judges of the Hon'ble High Court. These issues can be dealt with if rules are made and not otherwise.

17. Nothing prevents the State Government from making rules in this behalf specifically for this purpose. A provision for pension has thus been made when the legislature so wanted it, as can be seen in the case of Central Administrative Tribunal. Thus, Rule 8 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1985 reads as follows:-

8. Pension- (1) Every person appointed to the Tribunal as the Chairman, a Vice Chairman or a Member shall be entitled to pension provided that no such pension shall be payable-

(i) if he has put in less than two years of service; or

(ii) if he has been removed from an office in the Tribunal under sub-section (2) of Section 9 of the Act.

(2) Pension under sub-rule (1) shall be calculated at the rate of rupees seven hundred per annum for each completed year of service 1[**] and irrespective of the number of years of service in the Tribunal, the maximum amount of pension shall not exceed rupees three thousand five hundred per annum:

Provided that the aggregate amount of pension payable under this rule together with the amount of any pension including commuted portion of pension, (if any) drawn or entitled to be drawn while holding office in the Tribunal shall not exceed the maximum amount of pension prescribed for a Judge of the High Court.

1. Omitted by GSR 417 (E), dt. 31.3.1989

18. (i) In Justice P. Venugopal (supra), a bench of three Judges of this Court has laid down that a High Court Judge is entitled to pensionary benefits only in terms of the High Court Judges (Conditions of Service) Act, 1954 and not otherwise. A clubbing of additional services, if any, for the purpose of computation of pension is not contemplated. As seen from the calculations tendered by the first respondent it is very clear that he was clubbing his service as a High Court Judge and as the President of the State Commission, to claim the pension, though not exceeding the maximum of the pension prescribed for Judges of the High Court. It is also relevant to note that it is not stated in the Calculation Sheet as to which portion of the proposed pension was to be paid by the State Government and which would be payable for the services as a High Court Judge. Thus, on these facts the pension claimed was clearly inadmissible.

(ii) It is true that in para 26 of its judgment in Justice P. Venugopal (supra) this Court has laid down that the question as to whether a Judge rendering services subsequently would be entitled to pension from the State will depend upon the statute or the terms and conditions of appointment. As noted above, in our understanding the provisions of the statute and the rules in the present case are clear, and therefore the appellant could not be faulted for raising the queries with respect to the claim of the first respondent for the pension as the President of the State Commission, in the absence of specific provision in the rules.

19. The reliance by the respondent No. 1 on the judgment of this Court in Orissa State (Prevention and Control of Pollution) Board (supra) is also erroneous. That was a case, where there was a power under Section 19 of the Air (Prevention and Control of Pollution) Act, 1981, to declare any area as air pollution control area. This was to be done after consultation with the said Board by issuing a notification in the official gazette. This in fact, was done. What was lacking were the rules to be made under Section 54 of the Act to carry out the purposes of the Act, and amongst others it was provided under sub-section (2) thereof that the rules may

provide for the manner in which an area or areas may be declared as air pollution control area. It was canvassed on behalf of the respondent that in the absence of rules `prescribing this manner', the notifications issued under Section 19 would be bad. This court negated this argument. The observations of this court concerning the term `prescribed' will have to be looked in that context. It is in this context that what is observed in paragraph 13 of the judgment is more important. It reads as follows:- 13. Thus, in case manner is not prescribed under the rules, there is no obligation or requirement to follow any, except whatever the provision itself provides viz. Section 19 in the instant case which is also complete in itself even without any manner being prescribed as indicated shortly before to read the provision omitting this part in such manner as may be prescribed. Merely by absence of rules, the State would not be divested of its powers to notify in the Official Gazette any area declaring it to be an air pollution control area. In case, however, the rules have been framed prescribing the manner, undoubtedly, the declaration must be in accordance with such rules.

Thus, in the Orissa case the substantive declaration concerning the pollution control area had been done by following the procedure of issuing a notification in exercise of the power under Section 19 of the Act, and therefore the decision was complete and valid in itself. The rules prescribing the manner were not framed at all, and therefore non-adherence thereto would not vitiate the notification. In the instant case, the rules have been framed. They lay down the substantive provisions concerning the terms and conditions of the service, and they do not include pension. The scenario in the two cases is quite distinct.

20. Sant Ram Sharma (supra) was a case concerning promotions to selection grade posts in the Indian Police Service on the basis of merit. The statutory rules for that purpose were not framed, and it was contended that the executive government cannot be held to have power to make appointments and lay down conditions of service without making rules in that behalf. There was however, long administrative practice bordering on to a rule of effecting promotions based on merit, and not merely on seniority, and the appellant had also been considered for selection. It was in this context that this Court held that it would not be proper to say that till statutory rules governing promotions to selection grade posts are framed, Govt. cannot issue administrative instructions regarding the principles to be followed. The court repelled the contention by observing at the end of paragraph 9 as follows:- As a matter of long administrative practice promotion to selection grade posts in the Indian Police Service has been based on merit and seniority has been taken into consideration only when merit of the candidates is

otherwise equal and we are unable to accept the argument of Mr. N.C. Chatterjee that this procedure violates, in any way, the guarantee under Arts. 14 and 16 of the Constitution. Hence, this judgment cannot be read as a judgment permitting an additional grant when the rules do not provide for the same.

21. The decisions of this court in *Lalit Mohan Deb Vs. Union of India* reported in 1973 (3) SCC 862 and those in *Union of India and another Vs. Central Electrical and Mechanical Engineering Service (CEMES) Group 'A' (Direct Recruits) Association, CPWD and others* reported in 2008 (1) SCC 354 are also to the same effect, namely that the executive instructions have to be in conformity with the rules and not inconsistent therewith. In the present case rules have been framed. It is not a case of absence of rules. It is a case where there is no concept of pension at all in the concerned rules. The question is whether such a provision can be brought in through an executive order for the benefit of an individual. In the instant case there are rules framed for the purpose of Section 16 (2) of the Act read with Section 30 (2) of the Act. The rules do not provide for any pension, and if they do not so provide, the concept and the obligation thereunder cannot be brought in through an executive order. It is also very relevant to note that the Oxford Dictionary defines the verb 'prescribe' amongst others, as follows:-

to state authoritatively that something should be done in a particular way.

When Section 16 (2) lays down that the terms and conditions of service shall be such as may be prescribed, there is an element of authoritativeness, and a requirement to act in a particular way.

22. The provision of Section 31 of the Act is to be looked at from this point of view. It provides for the rules and regulations to be laid before each House of Parliament and State Legislature. The first respondent relied upon the judgment of this Court in the case of *M/s Atlas Cycle Industries Ltd. Vs. State of Haryana* reported in 1979 (2) SCC 196 to submit that laying down was not mandatory but was a directory provision. In the present case, it is difficult to say that this provision is merely directory. But in any case, what Section 31 indicates is that the Union Parliament or the State Legislature is to be kept informed about the rules. This is because it concerns the public finance and the functioning of the authorities under the Act. It is a welfare enactment and it cannot be said that these provisions are such which can be ignored. This is only to emphasize that one has to function within the four corners of law, and the executive power cannot be used to act outside thereof.

23. We cannot ignore that the provisions of statute and the rules are to be read as they are. As stated by Justice G.P. Singh in Principles of Statutory Interpretation (13th Edition, Chapter 2 Page 64), the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.

[See also Crawford Vs. Spooner 4 Moo Ind. App. 179 and Nalinakhya Vs. Shyam Sunder AIR 1953 SC 148 Para 9 quoting with approval Crawford Vs. Spooner.] We may as well refer to the observations of this court in para 10 of State of Kerala Vs. K. Prasad reported in 2007 (7) SCC 140 to the following effect:- It needs little emphasis that the Rules are meant to be and have to be complied with and enforced scrupulously. Waiver or even relaxation of any rule, unless such power exists under the rules, is bound to provide scope for discrimination, arbitrariness and favouritism, which is totally opposed to the rule of law and our constitutional values. It goes without saying that even an executive order is required to be made strictly in consonance with the rules. Therefore, when an executive order is called in question, while exercising the power of judicial review the Court is required to see whether the Government has departed from such rules and if so, the action, of the Government is liable to be struck down.

(emphasis supplied)

24. The first respondent was undoubtedly entitled to receive pension for his tenure of service as a High Court Judge. The question is with respect to payability of pension for the service as the President of the State Commission. It is a matter concerning public finance, and such a grant cannot be made at the instance of the State Government when the rules do not prescribe the same. In the instant case the order according sanction to pension does not prescribe any period for eligibility nor any rate at which the pension is to be paid. This is apart from the fact that as seen from the Calculation Sheet tendered by the first respondent, the subsequent period of his service as the President of the State Commission was sought to be clubbed with the period of his service as a High Court Judge, which is impermissible. Such an order for the benefit of an individual cannot be considered to be a valid one. Any such exception being made by exercising executive power would be violative of Article 14 of the Constitution of India.

25. In the circumstances the appeal deserves to be allowed and the impugned judgment and order passed by the High Court is required to be set-aside. Accordingly, this Civil Appeal is allowed, the judgment and order of the High

Court dated 8.2.2005 in Writ Petition No.13302/2004 is hereby set- aside, the said writ petition filed by the first respondent is dismissed though without any order as to costs.

26. Mr. Amrendra Sharan, learned counsel for the first respondent submitted that in the event this Court is not inclined to hold in favour of the respondent No.1, the payment made so far should not be recovered. He relied upon the judgment of this Court in the case of Yogeshwar Prasad Vs. National Institute of Education Planning and Admn. reported in 2010 (14) SCC 323 wherein this court held in the facts of that case the grant of higher pay scales should not be recovered unless it was a case of misrepresentation or fraud. This judgment in turn referred to an earlier judgment in Sahib Ram Vs. State of Haryana reported in 1995 Supp. (1) SCC 18. In that matter the appellant was held to be not entitled to a salary in the revised scale. However, since the higher pay scale was given to him due to wrong construction of the relevant order by the authority concerned and not on account of any misrepresentation by the employee, the amount paid till the date of order was directed not to be recovered. When this appeal was admitted, stay as prayed by the appellant was declined, but it was made clear that the payment made by the appellant pursuant to the judgment of the High Court will be subject to the decision of appeal. Mr. Mariarputham, learned counsel for the appellant submitted that the appeal is canvassed basically in view of the principle involved. In view thereof, although the appeal is allowed, the additional pension paid to the first respondent as the President of the State Commission till the end of February 2012, will not be recovered from him. However, from March, 2012 onwards the first respondent shall be entitled to receive pension only for the service rendered by him as a High Court Judge.

COMMON ORDER

In view of divergence of opinion in terms of separate judgments pronounced by us in this appeal today, the Registry is directed to place the papers before Hon'ble the Chief Justice for appeal being assigned to an appropriate Bench.