

# SUPREME COURT OF INDIA

Lok Prahari, Through Its General Secretary S.N. Shukla

Vs.

Union of India through Its Secretary

C.A.No.3798 of 2018

(Jasti Chelameswar and Sanjay Kishan Kaul, JJ.,)

16.04.2018

## JUDGMENT

**Jasti Chelameswar, J.,**

SLP(Civil) No.9584 of 2017

1. Leave granted.

2. This appeal arises out of a Writ Petition that challenged the Constitutional validity of certain Amendments made to the Salaries, Allowances and Pensions of Members of Parliament Act, 1954 (hereinafter referred to as “the Act”). The provisions allenged relate to the payment of pension and other facilities to members of Parliament (hereinafter referred to as “MPs”) and ex- members of Parliament (hereinafter referred to as “ex-MPs”), and their spouses/companions/dependents (collectively hereafter referred to as “ASSOCIATES”). The 1st Appellant sought the following prayers, inter alia, in the Writ Petition before the Allahabad High Court:

1. “Declare that the provisions of various amending Acts to Act 30 of 1954, and particularly those of the Amending Act 9 of 2004, and Amending Act No. 40 of 2006 and Amending Act 37 of 2010, providing for pension/family pension to ex-MPs/dependents, travel facilities to spouse and other non-members, (in addition to the companion) and ex-MPs, as well as continuation of facilities, regarding unutilized quotas of telephone calls electricity and water units are ultra vires of the Constitution and the original Act.

2. Issue a mandamus to the opposite parties 1 to 4 to stop forthwith payment of pension/family pension to ex- MPs/dependents, and provision of other facilities in 1 above.

3. Order recovery of illegal pension/family pension from the recipients thereof.”

3. The High Court dismissed the writ petition negating all contentions raised by the 1st Appellant herein, holding that the issue is no longer res integra in view of the Judgment in *Common Cause, A Registered Society v. Union of India*<sup>1</sup> (hereafter referred to as "Common Cause") wherein this Court held that Parliament is competent to legislate on pensions for ex-MPs and as a corollary it has the power to prescribe any condition subject to which the pension may be paid. We are in total agreement with the conclusion of the High Court on the question of legislative competence.

4. The question which remains to be answered is whether any of the impugned amendments which create various rights in favour of ex-MPs & their ASSOCIATES and certain other facilities to MPs are violative of Article 14 of the Constitution of India, 1950 as being discriminatory. It was the case of the Appellant that the Common Cause case is silent in this respect. However, the High Court took the view that the attack on Article 14 is foreclosed by Common Cause.

5. It is argued before us that Common Cause took note of the Petitioner's argument therein that the Act is violative of Article 14, however, there was neither any discussion on the issue nor any binding decision on the question. Therefore, it is submitted that the High Court erred in concluding that the challenge to the impugned provisions is impermissible. We propose to limit our examination in the present case to the question of the constitutionality of various Amendments brought after the Common Cause case on grounds other than legislative competence.

6. To answer the same, we may start with the analysis of the various provisions of the Constitution creating various constitutional offices because some of these provisions contemplate the possibility of the payment of pension in respect to certain Constitutional offices, while no express reference is made with regard to various other offices created by the Constitution.

7. Article 59(3) specifies that the President shall be entitled to such 'emoluments, allowances and privileges as may be determined by Parliament by law' while Article 158(3) specifies the same for the Governor. Neither of the Articles make any reference to the payment of pension. However, Section 2 of the President's Emoluments and Pension Act, 1951 provides for the payment of pension and other facilities to the retiring President.

8. Article 75(6) and Article 164(5) respectively speak of the salaries and allowances of Ministers, which Parliament and the State Legislature may determine by law.

9. Articles 97 and 186 provide for the payment of 'salaries and allowances' of the Chairman and Deputy Chairman and the Speaker and the Deputy Speaker of Parliament and State Legislatures. The Vice-President's Pension Act, 1997 has an identical provision with respect to the payment of pension and post retirement facilities as are provided to the President.

10. Article 106 of the Constitution stipulates that MPs shall be entitled to receive ‘salaries and allowances’ to be determined by Parliament through legislation. There is no express reference to the payment of pension.

11. On the other hand, the provisos to Article 125(2) and Article 221(2) respectively make an express reference to the payment of pension to judges of the Supreme Court and the High Courts.

12. Article 148(3) provides that salary and other conditions of service of the Comptroller and Auditor-General shall be as may be determined by Parliament by law. The proviso thereto contains a reference to the payment of pension. The Comptroller and Auditor-General’s (Duties, Powers and Conditions of Service) Act, 1971 contains various provisions for the payment of pension on his/her demission of office.

13. Article 322 declares that the expenses of Public Service Commissions shall be charged on the Consolidated Fund of India and such expenses include “salaries, allowances and pensions” payable to or in respect of the members or staff of the Commission.

14. Article 324(5) stipulates that “conditions of service and tenure of office of the Election Commissioners shall be such as the President may by rule determine.” Though the Constitution is silent in regard to payment of pension to the Election Commissioners, Section 6 in the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 makes provision for payment of pension to Election Commissioners which is equal to the pension payable to a Supreme Court Judge.

15. From the Constitutional scheme it can be seen that no express mandate exists for the payment of pension with respect to any one of the Constitutional offices. However, Articles dealing with the Judges of the Supreme Court and the High Courts and the Comptroller and Auditor-General stipulate that pensions payable may not be varied during their tenure. The implication being that if the law dealing with the service conditions of any of the incumbents of any one of the said offices at the time of their appointment provides for the payment of pension, such a provision of law cannot be varied to the detriment of the incumbent.

16. The provisions under challenge fall under two categories (i) provisions which confer the right of free travel etc. to the MPs and their ASSOCIATES; and (ii) provisions which confer the benefit of pension and the right of free travel etc. to the ex-MPs and their ASSOCIATES.

#### THE PROVISIONS UNDER CHALLENGE:

17. Section 8A of the Act grants pensions to (i) ex-MPs, and (ii) upon their death, the pension is given to their respective spouses. Section 8AC provides family pension to the spouse of such MPs on the death of the MP. It is pertinent to mention here that Section 8A as originally enacted provided that an MP, to be eligible for Pension must have completed four years of tenure in Parliament. But this was done away with retrospective effect by the Amendment Act No.9 of 2004. Section 6B(1) of the Act confers a right to all the MPs for

unlimited travel by train along with spouse/companion from any place in India to any other place in India. Section 6B(2) provides up to 8 air journeys in a year from the MP's usual place of residence to Delhi and back when Parliament is in Session and also provides the spouse of the MP unlimited train travel by First Class AC at any time during the year. Section 8AA confers a right of travel facilities to the ex-MPs and their ASSOCIATES. It provides for free AC-II Tier pass for one person to accompany an ex-MP in all train journeys and unlimited free travel by train along with spouse/companion from any place in India to any other place in India.

18. The provisions are impugned on the following grounds:

(i) the contrast in the language displayed in the various Articles of the Constitution dealing with the salaries and other allowances payable to the various Constitutional office holders should necessarily lead to the conclusion that the Constitution does not permit the payment of pension and other benefits to MPs and ex-MPs;

(ii) the framers of the Constitution specifically denied pensionary benefits to the MPs and therefore giving of any POST RETIREMENT BENEFITS to ex-MPs and their ASSOCIATES would amount to treating those who were denied this constitutional right to pension at par with those constitutional offices whose pension was expressly protected. And to treat them on the same footing would result in a violation of the right to equality;

(iii) the impugned provisions are irrational and arbitrary because the grant of pension to all ex-MPs without taking into consideration their respective tenure and economic conditions goes against public interest ; and

(iv) looked at from the point of view of the taxpayers and crores of poor and needy people of the country, the impugned provisions are an unfair and unjust exercise of the legislative authority of the Parliament.

19. We shall now examine the core submission - whether the silence in Article 106 operates as a prohibition for payment of pension to the former MPs?

20. The submissions of the Appellants proceed on the wrong assumption that certain provisions of the Constitution mandate the payment of pension to persons who hold constitutional offices like the Judges of this Court. We have already examined the language of the relevant provisions of the Constitution. We are of the opinion that, on a true and proper construction of the text of those provisions, they do not mandate the payment of pension. They only protect the pension if payable under the relevant law applicable on the date of appointment of a person to any one of those offices by declaring that such a condition could not be altered to the detriment of a person subsequent to his appointment. However, the constitutional obligation to pay pension to persons who hold such offices may arise by implication having regard to the overall scheme of the Constitution relevant to those offices. The need to secure the independence of the holders of those offices by assuring them that

either the legislature or the executive will not be able to deprive them of the financial resources necessary to keep them away from impecuniousness, irrespective of the fact that a decision taken by the incumbents of each of those offices in discharge of the official responsibilities is acceptable or not either to the legislature or the executive. We must hasten to add that we must not be understood to be making any final declaration of law in this regard. The purpose of this analysis is limited only to demonstrate that the Appellants starts on a wrong premise in assuming that the text of the Constitution contains express provisions mandating the payment of pension in connection with certain constitutional offices.

21. The fact that there are express references to the payment of pension in the Constitution for certain Constitutional functionaries and not for others, in our opinion does not lead to the conclusion that the Constitution by its silence prohibits the payment of pension to those constitutional functionaries. Each Constitutional office holder functions in accordance with the powers and duties entrusted to it either by the Constitution or the laws relevant to their powers and duties. The framers of the Constitution believed that certain offices required a higher degree of protection, having regard to the greater degree of independence expected of the holders of their offices. The framers knew history and the attempts of the men in power to subjugate the holders of such offices. Safeguards, therefore, were provided in respect of the various aspects of the tenure and other conditions of service relevant for their offices. When it comes to MPs, however, such a higher degree of constitutional protection is not obviously required as the authority to make laws rests only with them.

22. The terms and conditions subject to which a person is either appointed or elected to occupy the constitutional office is a matter of policy choice. The appropriate legislature would be the constitutionally designated authority to determine those conditions. It is too well settled in constitutional law that the authority of legislature to make a policy choice is only circumscribed by the limitations imposed by the Constitution, either by an express provision or by a necessary implication arising out of the scheme of the Constitution. It is a well established principle commencing from *McCulloch's* case and followed by a long line of judicial pronouncements that whatever is not prohibited by the Constitution is permissible for the legislature.

23. Further if we were to accept the argument that those Constitutional functionaries who are entitled to pension by the text of the Constitution form a distinct class exclusively entitled to the payment of pension the result would be that the CAG, the Chairman and Deputy Chairman of the Parliament or State Legislature, and Ministers of the Centre and State would be disentitled to pension.

24. Another argument advanced by the Appellants is that pension is payable to an employee of State after his superannuation. Since MPs are not employees of State, they are not entitled for pension nor the Parliament is competent to provide payment of pension to the ex-MPs. In our opinion, there is a fallacy in the above submission, insofar as it assures that pension is only payable to former employees of State and nobody else. Such a submission emanates from the fact that certain payments made to the former employees of State are called

pensions and the misconception of the Appellants that the expression ‘pension’ can only have one meaning. There are various other categories of payments made by State which are called ‘pensions’, such as, Old Age Pension, Widow Pension, and Disability Pension etc.

25. The appellants have relied upon the decision in *Alagaapuram R. Mohanraj & Others v. Tamil Nadu Legislative Assembly*<sup>2</sup>, to argue that the activity of MPs is not an “occupation” contemplated by Article 19(1)(g) of the Constitution of India and, therefore, no pension can be paid to ex-MPs or their ASSOCIATES.

26. In our opinion, this argument is only to be rejected, because it once again is premised on the belief that the expression ‘pension’ has only one connotation in law. The question before this Court in *Alagaapuram R. Mohanraj* was whether a Member of the Legislative Assembly is carrying on any occupation within the meaning of Article 19(1)(g) of the Constitution of India. The fact that this Court held that this is not an occupation under Article 19(1)(g) need not necessarily mean that the Parliament is prohibited from making payment of such allowances to MPs if it considers it appropriate having regard to various relevant factors.

27. The expression “allowances” of MPs occurring under Entry 73 of List-I of the Seventh Schedule, in our opinion, is wide enough to cover the payment of “pension” and the other benefits covered by the impugned provisions to MPs or ex-MPs. Even otherwise the authority of Parliament under Entry 97 of List-I is wide enough to cover the impugned legislation as held by Common Cause.

28. In this context, we may recall the remarks made by two eminent members of the Constituent Assembly, namely Dr. B.R. Ambedkar and Shri K.T. Shah to illustrate the fallacy of the Appellants’ understanding.

29. Dr. Ambedkar, while debating the need to provide pensionary benefit to the President of India, threw some light on the question: whether the Constituent Assembly sought to exclude post retirement benefits to Members of Parliament:

“Therefore, in the form in which the amendment is moved, I do not think that it is a practical proposition for anyone to accept. But there is no doubt about the general view that he has expressed, that after a certain period of service in Parliament, Members, including the President, ought to be entitled to some sort of pension, and I think it is a laudable idea which has been given effect to in the British Parliament, and I have no doubt that our future Parliament will bear this fact in mind.”

[emphasis supplied]

30. In debating whether it was necessary to make an express provision for the payment of pension to Governors after they demit office, Shri Shah observed:

“The object of providing such security for the persons who have risen to this high level is the same as that which now secures to every workman in civilized nations an old-age pension, a pension or super-annuation allowance, which would be calculated to suffice to maintain him in the standard of life to which he was accustomed while at work. A pension is deferred pay, not paid to the worker while at work; and the analogy will hold here also. This also is a type of work-perhaps the highest of its kind- which should not go unprovided for altogether by the State for the rest of the period on earth of the Parties who have served so eminently the State.”

[emphasis supplied]

31. We are of the view that these questions are in the orbit of the wisdom of the Parliament in choosing/changing the legislative policy whether the various benefits created under the impugned provisions are rational having regard to the affluent financial status of some of the MPs or the poverty of the millions of the population etc. These are not justiciable issues. In this context, we may refer to the principle laid down by this Court in *Dr. P. Nalla Thampy Terah v. Union of India & Others*<sup>3</sup> :

“If the provisions of the law violate the Constitution, they have to be struck down. We cannot, however, negate a law on the ground that we do not approve of the policy which underlies it. Can the Court, for example, strike down Rule 90 on the ground that the limit of rupees one lakh is too high in the Indian context? We may have our own preferences and perceptions but, they cannot be used for invalidating laws.”

32. An I.A. was filed in this appeal, which is required to be disposed of. It was from Respondent No. 5, the Election Commission of India, which has sought to be deleted from the array of parties. It is stated that neither is any relief sought from them nor is any directive prayed for from Respondent No.5 in this appeal, as this is a purely constitutional challenge. I.A. is allowed. Respondent No. 5 stands deleted from the array of parties.

33. In view of the foregoing, the appeal stands dismissed, with no order as to costs.

Judgment Referred.

<sup>1</sup>(2002) 1 SCC 0088

<sup>2</sup>(2016) 6 SCC 0082

<sup>3</sup>(1985) Supp SCC 0189