

Justice Shailendra Singh & Ors. Vs. Union of India & Ors.

Writ Petition (Civil) No. 232 of 2023 · Supreme Court of India · 2024-11-05 · Dr Dhananjaya Y Chandrachud · J.B Pardiwala · Manoj Misra · F2J-C-1513

Full judgment text

Justice Shailendra Singh & Ors. Vs. Union of India & Ors.

[Writ Petition (Civil) No. 232 of 2023]

[Writ Petition (Civil) No. 3 of 2024]

Dr. Dhananjaya Y. Chandrachud, CJI

Background

1. The jurisdiction of this Court under Article 32 of the Constitution has been invoked by eight judges of the High Court of Patna who are aggrieved by a communication dated 13 December 2022 issued by the Under Secretary to the Government of India in the Department of Justice of the Union Ministry of Law and Justice. The communication has been issued to the Senior Accounts Officer in the office of the Principal Accountant General (A&E) at Patna.

2. The petitioners were appointed as District Judges on 15 April 2010. Seven petitioners in the first of the two petitions, were appointed as Judges of the Patna High Court on 4 June 2022 while the sole petitioner in the second petition was appointed as a Judge of that High Court on 22 November 2023. On appointment as Judges of the High Court, their salaries and conditions of service were to be governed by the High Court Judges (Salaries and Conditions of Service) Act 19541.

3. Chapter III of the Act governs salaries and pensions. Section 13A envisages that the Chief Justice of a High Court would be paid a salary of Rs 2,50,000 per mensem and that the salary of a Judge of a High Court would be Rs.2,25,000 per mensem. Section 142 provides for the payment of pension in accordance with the scale and provisions set out in Part I of the First Schedule. Section 15 makes a special provision for the payment of pension for judges of the High Court who have held any other pensionable post under the Union or State in accordance with the scale and provisions in Part III of the First Schedule. However, every such Judge may elect to receive the pension payable either under Part I or Part III of the Schedule.

4. Section 20 governs the payment of Provident Fund and is in the following terms:

"20. Provident Fund.- Every Judge shall be entitled to subscribe to the General Provident Fund (Central Services):

Provided that a Judge who has held any other pensionable civil post under the Union or a State shall continue to subscribe to the Provident Fund to which he was subscribing before his appointment as a Judge."

5. After the petitioners were appointed as judges of the High Court, no steps were taken by the authorities to open a General Provident Fund account as a consequence of which, on their retirement, they have not received any terminal benefit pertaining to the provident fund. The scope of the controversy, in the present case, turns on the interpretation of the provisions of Section 20.

Submissions

6. Mr. K Parameshwar, Amicus Curiae, has broadly addressed the Court on three propositions:

(i) The provisions of the Constitution and of the statute governing the conditions of service of sitting and former judges must be construed from the perspective of providing financial independence both at the institutional and individual level;

(ii) There must be uniformity of the service conditions of High Court judges both during service and after retirement and the intent underlying Article 221 would be defeated by making a distinction between the conditions of service available to judges (and former judges) of the High Court based on

their source of recruitment; and

(iii) All judges of the High Court constitute one single class as defined in Article 216 and Article 221, irrespective of the source of appointment and in consequence, the principle of non-discrimination in regard to the conditions of service must apply.

7. Mr. Rakesh Dwivedi, senior counsel, who has appeared in a companion matter, has also addressed the Court in the present batch of cases urging that:

(i) The provisions of the Constitution do not contemplate two classes of judges;

(ii) As holders of constitutional offices within constitutional institutions, there is only one class of High Court judges irrespective of whether they have been drawn from the Bar or the District Judiciary;

(iii) The requirement of financial independence which is the fundamental constitutional postulate underlying the provisions of Article 202(3)(d), Article 112(3)(d)(iii) and Articles 216, 217 and 221, applies in equal measure both to service and Bar judges appointed to the High Court;

(iv) The law under Article 221(1) must of necessity be uniform for all judges of the High Court and no sub-classification is permissible; and

(v) The domain of the law which is contemplated in Article 221 is for the determination of the quantum of salaries and there cannot be any bifurcation between the entitlements of judges of the High Court drawn from the district judiciary and the Bar.

8. Mr. R Venkataramani, Attorney General for India, on the other hand, has placed reliance on the proviso to Section 20 of the Act of 1954 and urged that the true intendment of the proviso is that a Judge who has held a pensionable civil post under the State (in this case, the district judiciary) will continue to subscribe to the provident fund to which he was subscribing before his appointment as a Judge of the High Court. It has been urged that with the implementation of the National Pension Scheme with effect from 1 April 2024, all district judges appointed after that date came to be governed by the New Pension Scheme with the consequence that any subscription to the provident fund must be in a manner consistent with the new scheme.

Hence, it has been urged by the Attorney General that a member of the district judiciary who is appointed as a Judge of the High Court, they would not be entitled to the benefit of the General Provident Fund which is otherwise applicable to Judges of the High Court. Finally, it has been urged that in any event, there is no justification for the petitioners to seek a transfer of the amounts of the New Pension Scheme Contribution as district judges to the General Provident Fund accounts, if they may be directed to be opened by this Court.

Analysis

9. Article 216 of the Constitution provides that every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint.³ Article 217(2) provides for the sources of recruitment of judges of the High Court from the Bar or, as the case may be judicial service and specifies the qualifications for appointment from the two sources.⁴

10. Article 221, in its present form, is in the following terms:

"221. Salaries etc. of Judges-

(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

11. Clause (1) of Article 221 was substituted by the Constitution (54th Amendment) Act 1986. Prior to its substitution, Clause (1) stipulated that there shall be paid to the judges of each High Court, such salaries as are specified in the Second Schedule. By the substitution of Clause (1), the salaries which are payable to Judges of the High Court are determined by Parliament by law and until such

determination is made, were to be governed by the salaries specified in the Second Schedule.

Clause (2) of Article 221 provides that every Judge shall be entitled to allowances and to such rights in respect of leave of absence and pension, as may be determined by law made by Parliament from time to time. The proviso to Clause (2), however, contains a guarantee that neither the allowances nor the rights of a Judge in respect of leave of absence or pension would be varied to their disadvantage after their appointment.

12. Article 202(3) provides for expenditures which should be charged on the Consolidated Fund of each State. Sub-clause (d) stipulates that expenditure in respect of the salaries and allowances of Judges of a High Court would fall in that category⁵. However, Article 112(3)(d)(iii) stipulates that the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included, inter alia, in the territory of India would be charged to the Consolidated Fund of India.⁶

13. The constitutional scheme for High Court Judges is unique in that the salaries and allowances payable to Judges of the High Court which are determined by a law enacted by Parliament are charged to the Consolidated Fund of each State under Article 202(3)(d). However, the pensionary payments payable to the Judges of the High Court in pursuance of a law enacted by Parliament under Article 221(2) are charged to the Consolidated Fund of India by virtue of Article 112(d)(3). Elaborate provisions have thus been made by the Constitution to secure the independence of the Indian Judiciary by providing Judges a measure of financial independence both during their term of office and after retirement.

14. At this stage, it would be material to note that Section 221 of the Government of India Act 1935 contained the following provisions in regard to the payment of salaries and allowances for Judges of the High Court:

"221. The judges of the several High Courts shall of be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment."

15. The draft framed by the Constitutional Adviser, Sir B N Rau, contained a stipulation in draft Article 165 by virtue of which the salaries and allowances of Judges of the High Courts and matters pertaining to leave and pension would be determined by or under an Act of the provincial legislature. Article 165 was in the following terms:

"165. The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pension, as may be from time to time be determined by or under Act of the Provincial Legislature, and until they are so determine, shall be entitled to such salaries, allowances, and rights in respect of leave and pension as are specified in the Second Schedule to this Constitution:

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment."

16. In the draft Constitution, draft Article 197 also contemplated that the salaries and allowances and matters of leave and pension would be governed by a law enacted by the Legislature of the State⁷.

17. During the course of the deliberations in the Drafting Committee, the words "the legislature of the State in which the Court has its principal seat" were substituted by "Parliament". As a consequence of this, the Constitution did not leave it to the wisdom of the legislature of each State to determine the salaries and allowances payable to judges of the High Court or for that matter, issues pertaining to their rights in respect of leave of absence and pension.

18. The constitutional history is of significance because it indicates the careful manner in which provisions pertaining to salaries, allowances and pensions of the Judges of the High Courts were drafted so as to preserve the independence of the judiciary. It is in this backdrop that it becomes necessary to consider the position of a Judge of the district judiciary who is subsequently appointed as a Judge of the High Court.

19. This Court has, on several occasions underlined the importance of financial independence, and financial dignity for serving and retired judges of the district judiciary. In the decision of this Court in All India Judges Association Vs Union of India⁸, the nature of the inter-relationship between judicial independence and financial independence has been reiterated in the following terms:

"13. Judicial service is an integral and significant component of the functions of the State and contributes to the constitutional obligation to sustain the rule of law. Judicial service is distinct in its characteristics and in terms of the responsibilities which are cast upon the officers of the District Judiciary to render objective dispensation of justice to citizens. The State is duty bound to ensure that the conditions of service, both during the tenure of office and after retirement, are commensurate with the need to maintain dignified working conditions for serving judicial officers and in the post-retirement emoluments made available to former members of the judicial service.

Members of the district judiciary are the first point of engagement for citizens who are confronted with the need for dispute resolution. The conditions in which judicial officers across the country are required to work are arduous. The work of a judicial officer is not confined merely to the working hours rendered in the course of judicial duties in the court. Every judicial officer is required to work both before and after the court working hours. The judicial work of each day requires preparation before cases are called out.

A judicial officer continues to work on cases which may have been dealt with in court, in terms of preparing the judgment and attending to other administrative aspects of the judicial record. That apart, members of the district judiciary have wide ranging administrative functions which take place beyond working hours, especially on week-ends including the discharge of numerous duties in relation to prison establishments, juvenile justice institutions, legal service camps and in general, work associated with the Legal Services Act 1987.

14. The work of a Judge cannot be assessed solely in terms of their duties during court working hours. The State is under an affirmative obligation to ensure dignified conditions of work for its judicial officers and it cannot raise the defense of an increase in financial burden or expenditure. Judicial officers spend the largest part of their working life in service of the institution. The nature of the office often renders the incumbent incapacitated in availing of opportunities for legal work which may otherwise be available to a member of the Bar.

That furnishes an additional reason why post-retirement, it is necessary for the State to ensure that judicial officers are able to live in conditions of human dignity. It needs to be emphasized that providing for judges, both during their tenure and upon retirement, is correlated with the independence of the judiciary. Judicial independence, which is necessary to preserve the faith and confidence of common citizens in the rule of law, can be ensured and enhanced only so long as judges are able to lead their life with a sense of financial dignity.

The conditions of service while a judge is in service must ensure a dignified existence. The post-retirement conditions of service have a crucial bearing on the dignity and independence of the office of a judge and how it is perceived by the society. If the service of the judiciary is to be a viable career option so as to attract talent, conditions of service, both for working and retired officers, must offer security and dignity."

(emphasis supplied)

20. Members of the Bar who are appointed to the High Court are entitled to subscribe to the General Provident Fund in terms of Section 20 of the Act of 1954. The issue is whether such a benefit can be denied to a Judge of the High Court who was a member of the district judiciary prior to their appointment as a Judge of the High Court.

21. The High Courts are constitutional institutions. Their status as constitutional institutions is recognised by Article 216. Article 216 does not make any distinction between the source through which judges of the High Court are recruited. It stipulates that a High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. In other words, once appointed to the High Court, every Judge ranks at par. Once appointed, no distinction can be made between judges for the purpose of the payment of salary and for extending other service conditions both during and after they cease to be in service.

22. Article 217, which provides for the appointment and conditions of service of a Judge of the High Court specifies the sources from which the judges are drawn, namely, the district judiciary, and the Bar. The source from which the judges of the High Court are appointed, however, has no bearing on the position that once appointed to the High Court, all judges constitute a homogenous class without distinction. Making a distinction between judges of the High Court based on whether they were drawn from the Bar or, as the case may be, the district judiciary and to place judges drawn from either of the sources at a relative disadvantage would fundamentally militate against the sense of homogeneity which is envisaged by the constitutional provisions, particularly, Article 216.

23. Apart from the principle underlying the creation of a homogenous class of judges appointed to the High Courts, the Constitution has made specific provisions which guarantee financial independence of judges. Financial independence for judges is a necessary ingredient of maintaining judicial independence. The Constitution made a departure from the provisions of the Government of India Act 1935 under which the salaries and allowances as well as pension payable to judges of the High Court were to be determined by an Act of the provincial legislature.

24. Though, initially, a similar provision was contained in the draft articles of the Constitution, a conscious departure was made in the Constitution as it was framed. Before the 54th Amendment, the Constitution provided that the salaries of judges would be such as are specified in the Second Schedule. After the said Constitutional amendment which was brought into force on 1 April 1986, the salaries of judges of the High Court are determined by Parliament by law.

Likewise, matters pertaining to allowances, leave of absence and pension are governed by Parliamentary enactments. The object of providing for a Parliamentary determination of service conditions, in particular, the salary, allowances and pension was to bring about national uniformity in the conditions of service both of sitting and former judges of High Courts.

25. Clearly, therefore, it is not within the contemplation of the Constitution that the payment of salaries and the extension of other benefits both during and after service should be left to the vagaries of determination by individual States and the schemes which are applicable to civil service officers discharging duties in each State. The payment of salaries and allowances to sitting judges is charged to the Consolidated Fund of every State in terms of Article 202(3)(d). The importance which was attached to the payment of pension is clear from the fact that pensionary payments are charged on the Consolidated Fund of India under Article 112(d)(3).

26. These provisions of the Constitution have been curated with care, based on the overarching need to preserve judicial independence.

27. The principle of non-discrimination which animates Article 14 of the Constitution applies a fortiori to the manner in which sitting and former judges of the High Court are to be treated, irrespective of the source from which they are drawn. This principle of non-discrimination was underscored in the decision of this Court in *P Ramakrishnam Raju Vs Union of India*⁹, where the Court held:

"19. When persons who occupied the constitutional office of Judge, High Court retire, there should not be any discrimination with regard to the fixation of their pension. Irrespective of the source from where the Judges are drawn, they must be paid the same pension just as they have been paid same salaries and allowances and perks as serving Judges.

20. The fixation of higher pension to the Judges drawn from the subordinate judiciary who have served for shorter period in contradistinction to Judges drawn from the Bar who have served for longer period with less pension is highly discriminatory and breach of Article 14 of the Constitution. The classification itself is unreasonable without any legally acceptable nexus with the object sought to be achieved.

22. In most of the States, the Judgeship of the High Court is offered to advocates who are in the age group of 50-55 years, since preeminence at the Bar is achieved normally at that age. After remaining at the top for a few years, a successful lawyer may show inclination to accept Judgeship, since that is the culmination of the desire and objective of most of the lawyers. When persons holding constitutional office retire from service, making a discrimination in the fixation of their pensions depending upon the source from which they were appointed is in breach of Articles 14 and 16(1) of the Constitution. One rank one pension must be the norm in respect of a constitutional office."

28. This was reiterated recently in a decision of this Court in Union of India Vs Justice (Retd) Raj Rahul Garg¹⁰, where the Court held:

"30. Acceptance of the submission of the Union of India would discriminate against Judges of the High Court based on the source from which they are drawn. A member of the Bar is entitled to the addition of ten years of service by virtue of the provisions of Section 14A. On the addition of the years of service, their pensionary benefits would be computed on the basis of the last drawn salary as a Judge of the High Court. However, if the argument of the Union of India is accepted, the pension of a Judge who was a former District Judge would be computed on the basis of their salary as a District Judge.

A similar principle, as applicable to Judges appointed from the Bar, must be applied for computing the pension of a member of the district judiciary who is appointed to the High Court. Any other interpretation would result in a plain discrimination between the Judges of the High Court based on the source from which they have been drawn. Such an interpretation would do disservice to the importance of the district judiciary in contributing to the judiciary of the nation, and would be contrary to the overall scheme and intendment of Chapter III of the statute. It would go against the antidiscriminatory principles stipulated by this Court in so far as Judges drawn from various sources are concerned."

(emphasis supplied)

29. This leaves the Court with the task of interpreting the provisions of Section 20 of the Act of 1954. The substantive part of Section 20 stipulates that every Judge shall be entitled to subscribe to the General Provident Fund (Services). The expression 'every' coupled with the expression 'shall' underlines the mandatory character of the provision which does not brook any exception. However, what the proviso does is to deal with the case of a Judge who has held any other pensionable civil post under the State or Union. In terms of the proviso, such a Judge shall continue to subscribe to the provident fund to which the Judge was subscribing before appointment as a Judge.

Properly construed, the proviso was not intended to be restrictive in nature. Provisos can either be treated as exceptions or in the nature of an explanation to the main provision. The proviso, in the present case, is more in the nature of an explanation so as to allow a Judge who holds a pensionable post under the Union or a State and who is subscribing to provident fund to continue to do so even after appointment as a Judge of the High Court so as to ensure that the benefits which have already accrued would not be disrupted.

30. The Attorney General placed reliance on the proviso to contend that Judges of the district judiciary who are appointed after 1 April 2004, are governed by the New Pension Scheme.

31. At this stage, it would be necessary to clarify that in the course of these proceedings, we are not adjudicating on any issue pertaining to the applicability or the validity of the New Pension Scheme since that issue is pending before this Court in independent proceedings.

32. The simple issue before this Court is whether a member of the district judiciary, upon appointment as a Judge of the High Court, would be entitled to the benefit of the General Provident Fund which is available to all High Court judges under Section 20.

33. Unlike the payment of pensions where, as already noticed, there are different provisions in Sections 14 and 15 of Chapter III of the Act of 1954, there is only one specific provision in regard to the payment of provident fund which is contained in Section 20. The proviso to Section 20 would have to be strictly construed and so construed, it would have no application to the facts of the present situation. It is not in dispute that members of the district judiciary appointed after 1 April 2004 did not subscribe to any provident fund, in which event there was no question of applying the proviso to deprive them of the benefit of the General Provident Fund which is available under the substantive part of Section 20.

Conclusion

34. For the above reasons, we hold that:

(i) The High Courts are constitutional institutions and upon appointment as judges of the High Court, all judges, irrespective of the source from which they are drawn, partake the character of holders of constitutional offices in equal measure;

(ii) Neither Article 221(1) of the Constitution which empowers Parliament to determine the salaries of the Judges of the High Court nor Article 221(2) which empowers Parliament to determine the allowances and rights in respect of the leave of absence and pension permits discrimination between judges of the High Court based on the source from which they are drawn;

(iii) Article 217 of the Constitution specifies distinct sources of recruitment for judges of the High Court from the district judiciary or, as the case may be, the Bar. But once appointed to the High Court, all judges form one homogenous class of constitutional office holders;

(iv) Judicial independence is a part of the basic structure of the Constitution and there is an intrinsic relationship between financial independence of judges and judicial independence;

(v) The significance of provisions pertaining to the guarantee of service conditions, while in service and post retiral benefits for judges is evidenced by the fact that the salaries and allowances of sitting judges and the pensions of retired judges are in the nature of a charge on the Consolidated Fund of the State and the Consolidated Fund of India respectively;

(vi) Any determination of the service benefits of sitting judges of the High Court and the retiral benefits which are payable to them including pension, must take place on the basis of the fundamental principle of non-discrimination between judges of the High Court who constitute one homogenous group; and

(vii) All judges of the High Court, irrespective of the source from which they are drawn, are entrusted with the same constitutional function of discharging duties of adjudication under the law. Once appointed as judges of the High Court, their birthmarks stand obliterated and any attempt to make a distinction between judges, either for the purpose of determining their conditions of service while in service or any form of retiral dues would be unconstitutional.

35. The communication which was addressed by the Under Secretary to the Government of India in the Department of Law and Justice purportedly stated that as judges appointed by direct recruitment to the State Judicial Service after the adoption of the New Pension Scheme by the State Governments and subsequently appointed as High Court Judges are covered by the Contributory Provident Scheme of the State Government, they would not be eligible to subscribe to the General Provident Fund. The letter is not only based on a mis-appreciation of the statutory scheme underlying Section 20 of the Act of 1954 but is fundamentally at odds with the constitutional status of judges of the High Court as a homogenous class.

36. The letter dated 30 December 2022 shall accordingly stand quashed and set aside. In consequence, we allow the petitions by directing that a General Provident Fund account shall be opened with effect from the date of appointment of every one of the petitioners into which contributions shall be credited at par with all other judges of the High Court irrespective of the source from which they were drawn.

37. The amounts which are lying to the credit of the petitioners in the New Pension Scheme shall be returned to them within a period of four weeks from the date of this judgment.

38. Pending applications, if any, stand disposed of.

.....CJI. [Dr Dhananjaya Y Chandrachud]

.....J. [J.B Pardiwala]

.....J. [Manoj Misra]

New Delhi;

November 05, 2024

1 Act of 1954

2 14. Pension payable to Judges.- Subject to the provisions of this Act, every Judge shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part I of the First Schedule:

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

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

(b) he has attained the age of sixty-two years; or

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

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

Explanation.- In this section "Judge" means a Judge who has not held any other pensionable post under the Union or a State and includes a Judge who having held any other pensionable post under the Union or a State has elected to receive the pension payable under Part I of the First Schedule.

3 216. Constitution of High Courts.- Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

4 217. Appointment and conditions of the office of a Judge of a High Court.-

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal 222[on the recommendation of the National Judicial Appointments Commission referred to in Article 124-A], and 223[shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years:

Provided that-

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and-

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession;

Explanation.- For the purposes of this clause-

(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law; in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law] after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

5

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(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State-

(d) expenditure in respect of the salaries and allowances of Judges of any High Court

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(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India-

- (d)(i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court,
- (ii) the pensions payable to or in respect of Judges of the Federal Court,
- (iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in a Governor's Province of the Dominion of India

7 The judges of each High Court shall be entitled to such salaries and allowances, and to such rights in respect of leave and pensions, as may from time to time be fixed by or under law made by the Legislature of the State in which the Court has its principal seat, and until they are so fixed, shall be entitled to such salaries, allowances and rights in respect of leave of absence or pension as are specified in the Second Schedule:

Provided that the salary of the Chief Justice of a High Court shall not be less than four thousand rupees per month and the salary of any other judge of a High Court shall not be less than three thousand and five hundred rupees per month:

Provided further that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

8 2024 INSC 26

9 (2014) 12 SCC 1

10 2024 INSC 219

Justice Shailendra Singh & Ors. Vs. Union of India & Ors.

[Writ Petition (Civil) No. 232 of 2023]

[Writ Petition (Civil) No. 3 of 2024]

[Writ Petition (Civil) No. 1262 of 2021]

Writ Petition (Civil) No. 1262 of 2021

1. The petitioner practiced as an advocate for about fourteen years and eight months before joining the Uttar Pradesh Higher Judicial Service as an Additional District and Sessions Judge on 8 September 1977. He was elevated as a permanent Judge of the High Court of Judicature at Allahabad on 22 March 1996, after serving the district judiciary for eighteen years and six months. He attained the age of superannuation on 26 August 2002 after serving for six years, five months and six days as a Judge of the High Court.

2. A Pension Payment Order (PPO) was issued by the Office of the Accountant General (A&E)-II U.P., Allahabad, by which his pensionary payments were computed.

3. The grievance of the petitioner is that his pensionary payment has been computed at a rate lower than those Judges who were elevated to the High Court from the Bar.

4. The PPO dated 13 July 2018 contains the following tabulation.

5. Revised Pension with effect from 01-01-2016 : Pay Fixation/2.57 factor (Whichever is beneficial)

(a) Basic Pension Rs.107735/-

(b) Commuted Pension Rs.6224/-

(c) Reduced Pension (a-b) Rs.101511/-

(d) Family Pension (Enhanced Rate) N.A.

(e) Family Pension (Normal Rate) Rs.67500/-

(f) Additional Pension As applicable from time to time

6. Disbursing Bank

- (a) Name of the Bank UNION BANK OF INDIA
- (b) Paying Branch (BSR Code) UBIN 059856 BSR - 0290985
- (c) Account No. 398502010101352
- (d) Address Noida Main Branch Sector 29 B.P. Noida

5. Section 15 of the High Court Judges (Salaries and Conditions of Service) Act 1954¹ contains a special provision for the grant of pension to Judges who are members of service. Section 15(1) is in the following terms:

" 15. Special provision for pension in respect of Judges who are members of service.-

(1) Every Judge-

(b) who 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: Provided that every such Judge shall elect to receive the pension payable to him either under Part I of the First Schedule or, Part III of the First Schedule, and the pension payable to him shall be calculated accordingly."

6. The petitioner elected for pensionary payments under Part III of the First Schedule, which is set out 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. 45,016] per annum in respect of each completed year of service for pension:

Provided that the pension under clause (a) and the additional pension under (b) together shall in no case exceed [Rs. 15,00,000] per annum in the case of a Chief Justice and [Rs. 13,50,000] per annum in the case of any other Judge."

7. In terms of clause (2) of Part III, the petitioner has to be paid (a) the pension to which he would be entitled under the Rules of service if he were not appointed as a Judge of the High Court; and (b) a special additional pension of Rs 45,016 per annum in respect of each completed year of service for pension.

8. Section 14A of Act 28 of 1954 provides for the addition of a period of ten years with effect from 1 April 2004 for the purpose of pension to the service of a Judge who is appointed as a Judge of the High Court under Article 217(2)(b) of the Constitution. Article 217(2) provides for the qualifications for appointment as a Judge of the High Court². Clause (a) provides for the appointment of a person who has held judicial office for a period of at least ten years, while clause (b) provides for an Advocate who has been an Advocate of a High Court for at least ten years. Section 14A provides for an addition of a period of ten years for the purpose of pension to persons who fall under Article 217(2)(b).

9. The issue is as to whether the petitioner would be entitled to the addition of a similar benefit. In this context, it would be necessary to refer to the judgment of this Court in Union of India vs Justice (Retd) Raj Rahul Garg³, wherein it was held thus:

""30. Acceptance of the submission of the Union of India would discriminate against Judges of the High Court based on the source from which they are drawn. A member of the Bar is entitled to the addition of ten years of service by virtue of the provisions of Section 14A. On the addition of the years of service, their pensionary benefits would be computed on the basis of the last drawn salary as a Judge of the High Court.

However, if the argument of the Union of India is accepted, the pension of a Judge who was a former District Judge would be computed on the basis of their salary as a District Judge. A similar principle, as

applicable to Judges appointed from the Bar, must be applied for computing the pension of a member of the district judiciary who is appointed to the High Court.

Any other interpretation would result in a plain discrimination between the Judges of the High Court based on the source from which they have been drawn. Such an interpretation would do disservice to the importance of the district judiciary in contributing to the judiciary of the nation, and would be contrary to the overall scheme and intendment of Chapter III of the statute. It would go against the anti-discriminatory principles stipulated by this Court in so far as Judges drawn from various sources are concerned."

(emphasis supplied)

10. The petitioner qualified for appointment as a Judge of the High Court since he had held judicial office for at least ten years within the meaning of Article 217(2)(a). However, the petitioner was also a member of the Bar for over fourteen years and eight months prior to his appointment as a Judge of the High Court.

11. In this backdrop, we are of the view that it would be appropriate, particularly having regard to the law which has been enunciated in the above decision, to direct that the pensionary payments due to the petitioner be recomputed after giving him the benefit of an addition of ten years of service. However, it is clarified that the maximum basic pension which is payable to a Judge of the High Court of Rs 13,50,000 per annum shall continue to apply to the petitioner.

The petitioner retired from service on 26 August 2002. The difference in pensionary payments payable to the petitioner shall be computed with effect from the date of his retirement within a period of three months and the arrears that are due and payable in terms of the present order shall be paid over by 31 March 2025.

12. The petition is allowed in the above terms.

13. Pending applications, if any, stand disposed of.

.....CJI. [Dr. Dhananjaya Y Chandrachud]

.....J. [J.B. Pardiwala]

.....J. [Manoj Misra]

New Delhi;

November 5, 2024

1 Act No 28 of 1954

2 217 Appointment and conditions of the office of a Judge of a High Court

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and-

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession

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