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IN THE HIGH COURT OF DELHI AT NEW DELHI

**W.P.(C) No.12205 of 2009
with
W.P.(C) No.3507 of 2011**

+ W.P.(C) No.12205/2009

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Reserved on: 12.1.2012

Pronounced on: 24.2.2012

BERJINDER SINGH

. . . PETITIONER

Through: Mr. Ranjan Mukherjee,
Advocate.

VERSUS

LT. GOVERNOR OF DELHI & ORS.

. . .RESPONDENT

Through: Mr. Ravinder Agarwal,
Advocate for R-4.
Ms. Pratima K. Gupta,
Advocate with Mr. Arvind
Gupta, Advocate and Mr.
Rahul Mangla, Advocate for R-
3.
Mr. N. Waziri, Standing
Counsel (Civil) for Govt. of
NCT of Delhi.

+ W.P.(C) No.3507/2011

%

Reserved on: 17.2.2012

Pronounced on: 24.2.2012

L. MANSINGH

. . . PETITIONER

Through: Ms. Rajdipa Behura, Advocate
with Ms. V. Santhana Lakshmi
and Mr. Satish Mishra,
Advocates.

VERSUS

UOI & ORS.

. . .RESPONDENT

Through: Mr. A.S. Chandhiok, ASG with
Mr. Neeraj Chaudhary and Mr.
Khalid Arshad, Advocates for
UOI.
Mr. I.S. Alag with Mr. J.S.
Lamba, Advocates for R-2.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, Acting Chief Justice

1. In the Writ Petition (C) No.12205 of 2009, arguments were heard on 12.1.2012 and judgment reserved. Before judgment in that case could be delivered, Writ Petition (C) No.3570 of 2011 was also heard finally on 17.2.2012. Issue involved in this writ petition is identical as raised in the first petition. In the first petition, the petitioner was appointed as Chairman of the Delhi Electricity Regulatory Commission (hereinafter referred to as 'DERC'). In the second petition, the petitioner was appointed as Chairperson of Petroleum and Natural Gas Regulatory Board. There is a provision of fixation of pay contained in the Rules in both the regulatory bodies which *inter alia* provides that in case the Chairman or a Member appointed to these positions is in receipt of pension, the pay of such person is to be reduced by the gross amount of pension drawn by him. Both the petitioners have challenged the vires of this part of the Rule, as according to them, the normal pay to which Chairman of the respective bodies is entitled to should not be

reduced and should be paid without any deduction in addition to the pension which they are drawing from their erstwhile departments where they earlier served. It is for this reason, we propose to decide both these writ petitions by common orders without any fear of contradiction, we can take note of the facts in the first petition, i.e., W.P.(C) No.12205/2009 as it is pure legal issue which needs to be determined.

2. For deciding the controversy raised in this writ petition, it is not necessary to take stock of the facts in detail. The petitioner has questioned the validity of 1st proviso of Rule 4 of the Delhi Electricity Regulatory Commission (Salary, Allowances and Other Conditions of Service of the Chairperson and Members) Rules, 2001 (hereinafter referred to as 'the Rule 2001') on the ground that the said proviso is unconstitutional and ultra vires of Articles 14 and 16 of the Constitution of India. This Rule along with its proviso reads as under:

"4. Pay – The chairperson and Members shall each receive a pay of Rupees twenty six thousand per month:

Provided that in case a person appointed as the Chairperson or a Member is in receipt of any pension, the pay of such person shall be reduced by the gross amount of pension drawn by him.

Provided further that the Chairperson or a Member shall be entitled to draw allowances on the original basic pay before such fixation of pay."

3. The reason because of which the petitioner is impugning the validity of the aforesaid proviso is that the petitioner had earlier served in Central Government Department from where he retired as Chairman, Central Board of Direct Taxes (CBDT) on attaining the age of superannuation with effect from 13.9.2005. The petitioner is getting pension for rendering the said service. After his retirement, he was selected as Chairman of DERC which post he joined on 16.2.2006. As per Rule 4 of Rule 2001, he was to receive pay of ₹26,000 per month. However, in view of proviso to this Rule, the pay of the petitioner was reduced by the gross amount of pension drawn him as Ex-Chairman, CBDT. The contention of the petitioner is that the petitioner should be paid full pay of ₹26,000 without any deduction and as the proviso is coming in his way, constitutional validity thereof is challenged under these circumstances. The submission of the petitioner is that the duties and responsibilities of Chairman, DERC are not relatable to the previous service rendered by him in the Income Tax Department or in the capacity as the Chairman, CBDT and therefore, pension earned on account of previous service cannot be deducted for salary payable in gross pay of a fresh appointment to a new post which is not the case of repayment.

4. Learned counsel argued that the issue is completely answered by the High Court of Uttarakhand at Nainital in the case of **Lt. Gen. (Retd.) Dr. M.C. Bhandari Vs. State of Uttarakhand and others** [W.P. No.182 (SB) of 2008, decided on 15.4.2010]. It is argued that the aforesaid proviso to Rule 4 of Rules 2001 is bad in law for the following two reasons:

- (a) The deduction of the amount of pension from previous employment cannot be made from emoluments due as a result of performance of service in a job which is a fresh engagement and not an extension of the earlier job or post.
- (b) Deduction is also otherwise bad as from a category of pensioners, deduction is made only from one having a monthly pension and not from ne (similarly situated) having opted for CPF, (which is also a pension, only paid lump sum and not monthly).

5. Learned counsel further argued that "equal pay to equal work" is a well established legal doctrine flowing directly from Article 14 of the Constitution. The principles inhering in Article 14 also spill over to, affect and mold Article 16(1) and 39(d). Equality before law, equal treatment under the law is the spirit which

infuses the principle of equal opportunity in employment under State. Thus, Articles 14, 16(1) and 39 (d) are interlinked.

6. According to the petitioner, in the instant case, it is not denied that classification may be made between differently placed pensioners, but the intelligible differentia forming the classification must also have a clear nexus with the objective sought to be achieved by such classification. That later part is not apparent either from the impugned rule or from the affidavit of the contesting respondent. The impugned rule is, therefore, quite clearly hit by article 14 of the Constitution, as being without reason or reasonableness whatsoever.
7. He also referred to the various judgments in support of his plea for "equal pay for equal work", which are as follows:

- (1) The Supreme Court in ***State of Madhya Pradesh Vs. Pramod Bhartiya*** [AIR 1993 S.C. 286:

".....Equal pay for equal work, it is self-evident, is implicit in the doctrine of equality enshrined in Article 14, it flows from it. Because clause (d) of Article 39 spoke of "equal pay for equal work for both men and women" it did not cease to be a part of Article 14....."

- (2) The Supreme Court in ***Y.K. Mehta & others Vs. Union of India & another*** [AIR 1988 S.C. 1970]:

"....Even leaving out of our consideration Article 39(d), the principle of "equal pay of equal work", if not given effect to in the case of one set of government servants holding

same or similar posts, possessing same qualifications and doing the same kind of work, as another set of government servants, it would be discriminatory and violative of articles 14 and 16 of the Constitution.....”

(3) The Supreme Court in ***K. Thimmappa Vs. Chairman, Central Board of Director S.B.I.*** [AIR 2001 S.C. 467]:

“....When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation.....”

8. It is also the contention of the learned counsel for the petitioner that merely because the petitioner accepted the terms of his employment would not deprive him from challenging the validity of the aforesaid proviso as no estoppel arises for enforcement of fundamental rights as held by the Supreme Court in the cases of ***Olga Tellis Vs. Bombay Municipal Corporation*** [AIR 1986 S.C. 180] and ***Nar Singh Pal Vs. U.O.I.*** [AIR 2000 S.C. 1401]. It is also submitted that in other organisation of the Government, no such Rule for adjustment of pension is prescribed and in fact, in Central Electricity Regulatory Commission, which is also set-up under the Electricity Act, 2003, there had been such rule but correction is made by removing this kind of embargo.

9. We would like at this stage to take note of the arguments of Ms. Rajdeepa Behura, Advocate who appeared for the petitioner in the other writ petition, i.e., W.P.(C) No.3507/2011. She also pressed into service the principle of "equal pay for equal work" and submitted that the pension drawn by the petitioner as a result of serving in another job which was totally unconnected with the present assignment, could not be adjusted while fixing the pay as it would amount to denial of pay fixed for the present post as per the Rules and that would infringe the principle of "equal pay for equal work". She also submitted that as per the rules for appointment to the Regulatory Board, even private persons can be appointed as Members and in their case, there was no question of adjustment of any pension. It was resulting in discrimination qua the petitioner as the Members were drawing higher pay than the petitioner. She also submitted that by no stretch of imagination, the appointment as Chairman to the Regulatory Board could be treated as "reemployment". It was the case of fresh appointment and for this reason also, the pension drawn which the petitioner was drawing could be adjusted. She specifically referred to Section 2(h), 3, 4, 5 and 7 of the Regulatory Board Act in support of her submission.

10. Learned counsel for the respondent refuted the aforesaid submissions. He emphasized that the principles of estoppel would apply as the petitioner joined the service with full knowledge of aforesaid Rule. He, in fact, completed his term as Chairman, DERC drawing salary in this manner and it is not open for him to now question the said proviso. It is also argued that such kind of provision was clearly permissible as held by the Apex Court in ***V.S. Mallimath Vs. Union of India and Anr.*** [(2001) 4 SCC 31]. In the counter affidavit filed by the Govt. of NCT of Delhi, it is pointed out that the matter was examined in detail, but the proposal was not agreed to and therefore, the petitioner was communicated the decision vide letter dated 17.8.2009. It is also stated in the counter affidavit that the information was collected from other commissions regarding remuneration, fixing policy and position in other State Electricity Regulatory Commissions. Information received from as many as 12 States disclosed that gross pay was being reduced by the amount of pension/commuted portion.
11. Mr. A.S. Chandhiok, learned ASG appeared for the respondent appeared for the respondent/UOI in W.P.(C) No.3507/2011 and refuted the arguments of Ms. Rajdeepa Behura. He also emphasized that it was a case of appointment in terms of

Rules of pay as per which the petitioner was made aware of the fact that his pension would be adjusted from the pay fixed and with open eyes he accepted the offer and therefore, was estopped from laying challenge to this provision when for all these years he has accepted the appointment as per those terms and filed the writ petition at the fag end of his career. Mr. Chandhiok submitted that it was not a case of re-employment. However, his submission was that such a provision was valid and justified when the same was recognized in ***V.S. Mallimath (supra)***.

12. We have considered the respective submissions of the learned counsel for both the parties. It is not in doubt that Rule 4 of the Rules 2001 along with proviso were in existence when the post of Chairman of the DERC was notified to which the petitioner applied and was selected. It is also a matter of record that the terms were conveyed to the petitioner for acceptance vide offer of appointment letter dated 15.2.2006 which included the aforesaid condition of reducing the pay by the amount of pension received. The petitioner had tendered his acceptance to this offer of the appointment and therefore, accepted the conditions with free will and consent. Thus, normally when this position was accepted by the petitioner with open eyes and mind, it may not be permissible for him to

- challenge the action of the respondents. At the time of acceptance, he knew that he would be given pay after the deduction of pension which he was already drawing.
13. However, having regard to the fact that the constitutional validity of the aforesaid proviso to Rule 4 of Rules 2001 is challenged, it would be necessary to examine the issue.
 14. The question is whether such a proviso becomes unconstitutional merely because the service rendered by the petitioner as Chairman, CBDT is unrelated to the organisation in question which he took, viz., Chairman, DERC.
 15. In ***V.S. Mallimath (supra)***, the petitioner after retiring as Chief Justice of the Kerala High Court on 11.6.1991, was appointed as Chairman of the Central Administrative Tribunal on 05.12.1991. On retirement from Central Administrative Tribunal, he was appointed as a Member, National Human Rights Commission on 14.9.1994 and continued there till he attained the age of 70 years. While fixing his pay as Member, NHRC, the pension drawn by him as retired High Court of Kerala High Court was reduced. He challenged this pay fixation by filing writ petition under Article 226 of the Constitution contenting that Chief Justice was not a service under the Government of Union or Government of State and therefore, the pension received by him as retired Chief Justice could not

be deducted from his salary as Member, NHRC, under the proviso to Rule 3(b) of National Human Rights Commission Chairperson and Members (Salaries, Allowances and Other Conditions of Service) Rules, 1993. Thus, the question has arisen in almost identical circumstances on the application of similar kind of pay rule holding that the pension drawn can be adjusted, the Supreme Court *inter alia* has observed as under:

“Under the provisions of the Human Rights Commission Act, 1993, the Chairperson would be one who has been a Chief Justice of the Supreme Court and a Member could be appointed who is or has been a Judge of the Supreme Court and another Member, who is or has been the Chief Justice of the High Court. In the Rules, when the Rule Making Authority provided for a salary to be paid to a member under Rule 3(b), a proviso was inserted for deduction from such salary, the amount of pension other than disability or wound pension, which such Member was in receipt of, in respect of any previous salaries. The intention of the Rule making authority is crystal clear that any pension which a Member has been in receipt of, for the services rendered earlier, has to be deducted from the salary, which under the Rules has been indicated to be equal to the salary of the Judge of the Supreme Court. The contention of the petitioner to the effect that the previous service as Chief Justice of a High Court not being one under the Government of the Union, must be held to be not covered by the proviso, cannot be accepted, reading the rules as a whole. We have, therefore, no hesitation in coming to the conclusion that the proviso to Rule 3(b) would apply to the retired Chief Justice of India or the retired Chief Justice of a High Court and the pension which they are in receipt of, apart from the disability or wound pension, has to be deducted from their salary, which they are entitled to under the Rules. The contention of Mr. Iyer, appearing for the petitioner, on this score, therefore cannot be sustained.”

16. One very important aspect from the aforesaid which needs to be highlighted at this stage is that the Court had referred to

certain constitutional provisions to come to the conclusion that service rendered by a person as a Judge or Chief Justice of High Court, which is a constitutional post, is not a service under the Government of Union or Government, therefore, the pension received by him as retired a Judge or Chief Justice could not be deducted from his salary as a Member of National Human Rights Commission under the proviso to Rule 3(b) of the National Human Rights Commission Chairperson and Members (Salaries, Allowances and Other Conditions of Service) Rules, 1993. An important fall out of this discussion is that when because of an inbuilt provision in Constitution in respect of Judges or Chief Justice of High Court it is permissible to deduct the pension received by such a Judge or Chief Justice while drawing pay on getting similar appointment, post retirement, it cannot be said that this kind of provision of adjustment of pension is un-constitutional. How a provision like this can be treated as violative of Constitution when Constitution itself recognizes this kind of scheme while dealing with cases of High Court Judges or Chief Justice in similar circumstances.

17. We are also of the opinion that principle of "equal pay for equal work" would not arise. In case, the petitioner was to serve wherefrom he is retired, he would have rendered his duties by

getting the same pay. When such a person becomes Chairman of a Regulatory Authority, which can again be called a post under the dominion of Union of India, how he can be given the salary as well as pension in two different accounts thereby making his pay much more than the pay fixed under the Rules. Therefore, there is a proper justification and rationale for such a proviso relating to deduction of pension as the pension is also drawn from the Government only. The question of discrimination also does not arise as it is the total emoluments and moneys drawn by the petitioner which have to be taken into consideration, viz., pay and pension. Once these two are added, the emoluments received are not less than that of the Member of the Regulatory Board. The argument of discrimination is, thus, fallacious. No doubt, in the case of **Lt. Gen. (Retd.) Dr. M.C. Bhandari (supra)**, a Division Bench of Uttarakhand High Court has taken the view that such a provision would be bad in law as violative of Article 14 and Article 39(d) of the Constitution of India. The reason given is that the pension drawn as a result of serving in the Indian Army in that case was unrelatable service rendered by the petitioner as Chairman of Uttarakhand Public Service Commission. However, we find that the said Court did not take

notice of the Apex Court judgment in ***V.S. Mallimath (supra)***, we are in respectful disagreement with that judgment.

18. The result of the aforesaid discussion leads to the conclusion that these petitions are without any merits, the same are accordingly dismissed. However, there shall be no orders as to costs.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

February 24, 2012
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