

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3342 OF 2014

1. Neelkanth Vishwnath Dabholkar,
Age : 67 Years, Occu. : Pensioner,
R/o. : "Nishtha", Bungalow No. 9,
Anand Vihar, Paithan Road,
Aurangabad
2. Vikas Ramchandra Kingaonkar,
Age : 65 Years, Occu. : Retired / Reemployed
as Member, National Green Tribunal,
R/o. : C-36, Gulmohor Colony,
(Opp. Southern Command),
7, Queen's Guarden, Camp, Pune .. **Petitioners**

Versus

1. Union of India,
Through the Deputy Secretary,
Govt. of India, Ministry of Law & Justice
(Department of Justice), Jaisalmer House,
Mansingh Road, New Delhi
2. The Secretary to Govt. of India,
Department of Expenditure,
Ministry of Finance, New Delhi
3. The Accountant General (Accounts &
Entitlements) - II, Maharashtra,
Civil Lines, Nagpur - 400 001 .. **Respondents**

Shri P. M. Shah, Senior Counsel i/b Shri A. M. Gaikwad and S. P. Bramhe, Advocate for Petitioners.
Shri S. B. Deshpande, Assistant Solicitor General for Respondent Nos. 1 to 3.

CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.

CLOSED FOR JUDGMENT ON : 22/03/2016
JUDGMENT PRONOUNCED ON: 10/06/2016

JUDGMENT (Per S. V. Gangapurwala, J.):

1. The petitioners herein were the Hon'ble Judges of this Court. The grievance raised in the present petition is regarding payment of the quantum of house rent allowance for a period 01.01.2006 to 31.08.2008.

2. The petition revolves around Section 13 and Section 22 (A) (2) of the High Court Judges (Salaries and Conditions of Service) Act, 1954. The gravamen of the petitioners case is that, though the salaries of the Judges of the High Court were increased with effect from 01.01.2006 the benefit of the house rent allowance on the increased salary was given effect to from 01.09.2008 and the same is not in consonance with the statute.

3. Mr. Shah, the learned Senior Counsel for the petitioners in his usual lucid manner canvassed the submissions that can be culled out as under -

*A] The Government cannot amend or supersede statutory rules by administrative instructions. For the said purpose the learned Senior Counsel relies on the judgment of the Apex Court in a case of **Sant Ram Sharma V/s. State of Rajasthan and others** reported in **AIR 1967 SC 1910.***

B] The conditions of service of the Judges of the superior Courts and those of the public officers in the

executive side cannot be put on par as separate conditions of service are prescribed for High Court Judges by special legislation enacted in the year, 1954. The said submission is advanced to counter the reply given by the respondent that the revised rate of all allowances apply with effect from 01.09.2008 in respect of the Judges of the High Courts and the Supreme Court. The decision to fix the date is arrived at in consultation with the department of Expenditure, Ministry of Finance on the analogy of allowances paid to All India Services Officers. The learned counsel relies on the judgment of the Apex Court in a case of **All India Judges Association V/s. Union of India and others** reported in **(1992) 1 SCC 199.**

C] The scope of operation of statute cannot be subject to executive control. The statute itself lays down the date of its application. The executive could not have directed the benefit from subsequent date. Reliance is placed on the judgment of the Apex Court in a case of **Vineet Narain and others V/s. Union of India and others** reported in **(1998) 1 SCC 226.**

D] If, the field is occupied by legislation, any departmental letter or executive instructions cannot prevail over statutory rules. For the said purpose reliance is placed on the judgment of the Apex Court in a case of **Punjab Water Supply and Sewerage Board V/s. Ranjodh Singh and others** reported in **(2007) 2 SCC 491.**

E] The Government must defend its action on the basis of the order it has passed and it cannot improve its stand by filing subsequent affidavit. The learned Senior Counsel relies on the judgment of the Apex Court in a case of **Dipak Babaria and another V/s. State of Gujarat and others** reported in **(2014) 3 SCC 502.**

F] As per Section 22 (A) (2) of the Act of 1954 the petitioners are entitled for the house rent allowance at the rate of 30% of the salary. The salary with effect from 01.01.2006 is Rs. 80,000/- (Rs. Eighty Thousand only). The same is required to be considered while paying house rent allowance at the rate of 30% of the salary.

4. Mr. Deshpande, the learned Assistant Solicitor General with his usual exuberance put forth following propositions -

A] The Committee was formed by the Hon'ble former Chief Justice of India to recommend revised salaries, allowances and other service conditions of Hon'ble Judges of the Supreme Court and High Courts including post retiral benefits to retired Judges. The report was examined in consultation with the Ministry of Finance while deciding the salaries of the Judges of the High Courts and the Supreme Court which has noted that the salary of the Judges entitled them to receive allowances also. Hence, it is a total compensation / remuneration that must be taken into

account. Besides, there is a current equation between salaries of Judges and certain categories in the civil services and disturbing this equation would give rise to another round of demands from the civil services. The Ministry of Finance (Department of Expenditure) vide its O.N. Number 1/1/2008-IC dated 30th August, 2008 has already revised rates of all allowances (Except Dearness Allowance) including house rent allowance with effect from 01.09.2008 in respect of employees / officers of the Central Government - All India Services. Taking into account this aspect Section 22 (A) (2) of the Act of 1954 was amended to provide house rent allowance to Judges of the High Courts at the revised rates with effect from 01.09.2008.

B] The allowances in their basic character are compensation in lieu of expenses ordinarily expected to be incurred to maintain or avail of certain facilities that the Government proposed to provide. The allowances are more like reimbursement of expenses than pay or remuneration for service rendered. An officer is expected to have spent the amount before he gets the allowance. For this reason allowances are not provided from retrospective dates. It is for these reason allowances are made effective from a prospective date.

C] The learned A. S. G. further states that, in view of the aforesaid decision of the Central Government all allowances except dearness allowances to Judges were

allowed prospectively i.e. with effect from 01.09.2008 and the relevant provision U/Sec. 22 (A) (2) of the Act of 1954 was amended accordingly. In terms of amended provision the petitioners are entitled to house rent allowance at the revised rates with effect from 01.09.2008 only. The Government has taken the decision on the basis of recommendation of the 6th Central Pay Commission and after due consultation with Ministry of Law and Justice and Ministry of Finance.

5. In fact, we had adjourned the matter earlier with a hope that the matter would be resolved, however, the same did not fructify.

6. Before we advert to the material aspects it would be appropriate to refer to the relevant provisions -

"The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2009.

Section 1 (2)

Sections 2, 3, 4, 7, 8, 9, 10 and 13 shall be deemed to have come into force on the 1st day of January, 2006 and the remaining provisions of this Act shall be deemed to have come into force on the 1st day of September, 2008.

High Court Judges (Salaries and Conditions of Service) Act, 1954 {Unamended}.

Section 22A. Facility of rent free house

(1) -----

(2) Where a Judge does not avail himself of the use of an official residence, he may be paid every month an allowance equivalent to an amount of thirty percent of the salary plus thirty per cent of the dearness pay.

High Court Judges (Salaries and Conditions of Service) Act, 1954 {Amended}.

Section 13 (A). Salaries of the Judges

(1) There shall be paid to the Chief Justice of a High Court, by way of Salary, ninety thousand rupees per mensem.

(2) There shall be paid to a Judge of a High Court, by way of Salary eighty thousand rupees per mensem.

Section 22A. Facility of rent free house

(1) Every Judge shall be entitled without payment of rent to the use of an official residence in accordance with such rules as may, from time to time, be prescribed.

(2) Where a Judge does not avail himself of the use of an official residence, he may be paid every month an allowance equivalent to an amount of thirty percent of the salary."

7. The respondents in their affidavit have clarified that the Government never meant to treat the Hon'ble Judges of the High

Courts and the Supreme Court on par with officers of All India Services. As such we are not required to dilate on said aspect.

8. The proposition that Government cannot amend and supersede statutory rules by administrative instructions or that if the field is occupied by a legislation, executive instructions cannot prevail over statutory rules need not be debated. These are settled propositions of law. Executive instructions cannot override statutory provisions.

We are considering the present case on the basis of the statutory provisions.

9. The High Court Judges (Salary and Conditions of Service) Act, 1954 came to be amended vide the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2009. The said Act of the Parliament received the assent of the President on the 16th day of March, 2009.

10. The said amendment Act, 2009 itself laid down the provisions which shall be deemed to have come into force on the 01st day of January, 2006 and those which shall be deemed to have come into force on the 01st day of September, 2008. Vide the said Amendment Act on amendment to Section 13 (A) of the Act of 1954 the salary of the High Court Judge was increased to 80,000/- per mensem. The same was given effect to from 01st day of January, 2006 though the amendment Act was passed on 16th March, 2009.

11. The house rent allowance is payable to a High Court Judge as per Section 22 (A) (2) of the Act of 1954 the same has been

made applicable from 01st September, 2008. As per Section 22 (A) (2) when a Judge does not avail himself of the use of a official residence he may be paid every month an allowance equivalent to an amount of 30% of the salary. The house rent allowance is linked with the salary since 01.04.2004. Earlier to 01.09.2008 the provision i.e. Section 22 (A) (2) laid down that when a Judge does not avail himself to the use of an official residence he may be paid every month an allowance equivalent to an amount of 30% of the salary + 30% of dearness pay. The words " + 30% of dearness pay" came to be omitted vide amendment Act, 2009 with effect from 01.09.2008. The amending Act has made applicable the house rent allowance at the rate of 30% on the revised salary i.e. of 80,000/- per mensem from 01.09.2008. Up to 31st August, 2008 the petitioners are paid hosue rent allowance at the rate of 30% of the salary of Rs. 26,000/- per mensem and 30% of dearness pay. The salary was revised vide amendment Act of 2009. The benefit of revised salary, however, was given with retrospective effect i.e. from 01.01.2006. The benefit of the revised salary was not given for payment of house rent allowance up to 31.08.2008. Section 1 (2) of the amendment Act, 2009 itself lays down that Sections 2,3,4,7,8,9,10 and 13 shall be deemed to have come into force on the 1st day of January, 2006 and the remaining provisions of said Act shall be deemed to have come into force on the 1st day of September, 2008. House rent allowance is payable U/Sec. 22 (A) (2) of the Act of 1954.

12. It is not disputed that the salary was revised with effect from 01.01.2006. The salary paid to the High Court Judge till the amendment Act of 2009 came into force was paid at the rate of 26,000/- per mensem and house rent allowance was accordingly

paid considering the salary as 26,000/- per mensem so also considering 30% dearness pay. According to the petitioners as the benefit of the revised salary is given with effect from 01.01.2006 the said salary be considered for the payment of house rent allowance from 01.01.2006 to 31.08.2008 i.e. with a retrospective effect commensurate with the date of revision of the salary.

13. The amendment Act by virtue of Section 1 (2) has itself clarified the date of operation of the amendment Act 2009 to the provisions of the Act, 1954. The benefit of amendment Act as far as revision of increased salary is concerned governed by Section 13(A) is given from 01.01.2006 and for other purposes the benefit is given effect from 01.09.2008. The intention of the legislature must be found by reading the statute as a whole. The Court has to ascertain the intention of legislature by directing its attention not merely to the clauses to be construed but to the entire statute. The statute is to be construed according to the intent of those that make it and the duty of the Court is to act upon the true intention of the legislature. The benefit of other revised allowances such as sumptuary is also given from 01.09.2008.

14. The Court has to as far as possible avoid a construction which results into absurdity. It is well settled that when the language of the statute in its ordinary meaning and grammatical construction leads to manifest contradiction of the apparent purpose of the enactment or absurdity, presumably not intended a construction may be put upon it which modifies meaning of the words and even the structure of the sentence to interpret a statute in a reasonable manner. The Court must place itself in the

chair of a reasonable legislator / author.

15. Only because the salary has been revised with a retrospective date i.e. 01.01.2006 the benefit of said revised salary is also claimed for grant of house rent allowance from 01.01.2006. The same does not seem to be the intention of the amendment Act, 2009. The intendment of the amendment Act, 2009 with regard to the house rent allowance is to give benefit of the same from 01.09.2008. The amendment act has clearly clarified its intention vide Section 1 (2) of the amendment Act, 2009. The benefit of increased salary for computation for payment of house rent allowance has been covered by independent amending provision. The house rent allowance is a form of a perk and perquisite which has been made applicable qua the revised salary from 01.09.2008. Till 31st August, 2008 the house rent allowance was paid at the rate of 30% on Rs. 26,000/- + 30% of dearness pay. The petitioners have received the same. On and from 01.09.2008 the words 30% on dearness pay is omitted and from 01.09.2008 the petitioners are paid house rent allowance at the rate of 30% on the revised salary of 80,000/- per mensem. On and from the date house rent allowance is paid at the rate of 30% on the revised salary of 80,000/- per month, house rent allowance is not payable by adding 30% of the dearness pay and the same continues till date as vide amendment Act 2009 +30% of dearness pay is omitted w. e. f. 01.09.2008. If, the contention of the petitioners is accepted then from 01.01.2006 to 31.08.2008 the petitioners would claim house rent allowance at 30% of the revised salary of 80,000/- per mensem + 30% of dearness pay and from 01.09.2008 will only be paid house rent allowance at the rate of 30% on the revised

salary of 80,000/- per mensem only i.e. reducing the house rent allowance amount. Such an interpretation would not be in consonance with the intention of the amendment Act, 2009 but on the contrary will result into anomaly.

16. The salary was increased vide Amendment Act, 2009. The petitioners made representation on 12/05/2009 seeking enhanced house rent allowance w. e. f. 01.01.2006. On or about 10.03.2011 the Deputy Secretary to Government of India communicated that house rent allowance as claimed will be admissible only w. e. f. 01.09.2008. The writ petition is filed in April, 2014. In the facts of the present case the aspect of delay and laches is not insignificant. However as on merits itself we have not accepted contentions of petitioners we are not dilating on said aspect.

17. In light of the above conspectus of the matter the petitioners are not entitled for the relief claimed. The Writ Petition is dismissed, however, with no order as to costs.

[A. I. S. CHEEMA , J.] [S. V. GANGAPURWALA, J.]

sam/May.16