*  **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on 20th July, 2016**
**Decided on 11th August, 2016**

\+  **WP(C) 7702/2015**

AJAIB SINGH ..... Appellant

Through: Mr.R.K. Kapoor and Ms. Kheyali Sarkar, Advocates

Versus

UOI AND ANR. ..... Respondents

Through: Mr.Ripudaman Bhardwaj, CGSC with Mr. T. P. Singh, Advocate

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**CORAM:**
**HON'BLE MR.JUSTICE SANJIV KHANNA**
**HON'BLE MS. JUSTICE SUNITA GUPTA**

**J U D G M E N T**

**: SUNITA GUPTA, J.**

1. The petitioner Ajaib Singh was nominated as member of the National Commission for Minorities vide Notification dated 24th August, 2012 for a fixed tenure of three years from the date of assuming office. There was a provision of fixation of pay contained in the Rules which, inter alia, provided that the chairperson and every member shall be paid salary of Rs.80,000/- per month, provided that where the chairperson or member was a retired person, the salary payable together with the pension shall not exceed Rs.80,000/- per month. The petitioner has challenged the vires of proviso to this part of the Rule, as according to him, the normal pay to which the member was entitled to should not be reduced and should be paid without any deduction in addition to the

pension which he was drawing from his erstwhile department where he had earlier served.

2. For deciding the controversy raised in this writ petition, it is not necessary to go into details of the facts. The petitioner has questioned the validity of proviso to Rule 3 of National Commission for Minorities (Salaries & Allowance and Conditions of Service of Chairperson & Members) Rules 1995 (hereinafter referred to as 'the Rule, 1995' or 'the 1995 Rules') as unconstitutional on the ground that the said proviso is violative of fundamental and constitutional rights of the petitioner as guaranteed under Article 14, 16, 21 and 300A of the Constitution of India.

3. This Rule along with its proviso reads as under:-

> *"Salaries and allowances:-*
>
> *(1) Save as otherwise provided in sub-rule (2), the Chairperson and every Member shall be paid a salary of Rupees eighty thousand per month. Provided that where the Chairperson or a Member is a retired person from the Central Government or a State Government or Union Territory Administration or semi-Government body or Public Sector undertaking or a recognized research institution or other autonomous or statutory body, the salary payable together with the pension or pensionary value of the terminable benefits or both received by him shall not exceed eighty thousand rupees per month.*
> *Provided further that in case a retired judge of Supreme Court or a High Court is appointed as Chairperson or a Member of the Commission, the terms and conditions of service of such Chairperson or Member shall be in accordance with the instructions issued by the Ministry of Finance in respect of appointment of judges to various Commissions and in consultation with that Ministry.*
>
> *(2) If at the time of his appointment to the Commission, the Chairperson or a Member is in service of the Central or a State Government or Union Territory Administration, he shall have the option to receive his salary upon the age of superannuation in accordance with the rules of service applicable to him under the Central or State Government or Union*

*Territory Administration, as the case may be, and thereafter the provisions of these Rules shall apply.*

4. The reason because of which the petitioner is impugning the validity of the aforesaid proviso is that the petitioner had earlier served as Professor in Punjab University, Chandigarh from where he retired on 30th November, 2011. The petitioner was and is getting pension for rendering the said service. After his retirement, he was nominated as member of the National Commission for Minorities by notification dated 24th August, 2012 for a fixed tenure of three years from the date of assuming office. Pursuant to the aforesaid notification he assumed office w.e.f. 6th September, 2012. As per Rule 3 of the Rule 1995, he was to receive pay of Rs.80,000/- per month. However, in view of proviso to this rule, the pay of the petitioner was reduced by the gross amount of pension drawn by him as a Professor in the Punjab University. The contention of the petitioner is that he should be paid full pay of Rs.80,000/- without any deduction and as the proviso was coming in his way, constitutional validity thereon is challenged under these circumstances. The contention of the petitioner is that the pension is paid to the employee for his past service and not for his future, hence, pension is the right of the petitioner for his long, uninterrupted service for his employer. Therefore, deducting the amount of pension from the salary and allowances is illegal and unreasonable. Moreover, the petitioner was not serving under the Union, hence, the deduction of pension from the present salary is unconstitutional. His service as a member of the National Commission for Minorities had nothing to do with his previous service as a Professor in the Punjab University, Chandigarh which was pensionable.

5. Learned counsel for the petitioner submitted that the issue is squarely covered by the law laid down in WP(C) No.2356/2002 titled as ***Sh. E. Sreedharan vs. Union of India and Ors***., where Single Judge of this Court made the following observations:-

> *"24. Learned counsel for respondent no. 1 has very emphatically relied on V.S. Malimath (supra) which was a case pertaining to the salary of a Member of National Human Rights Commission. In the said case, it was held that the services rendered by a Member of National Human Rights Commission is to be treated as service in connection with the affairs of Union and, therefore, the pension received for such service was held to be deductable under Rule 3 of the Salaries, Allowances and other conditions of Services Rules, 1993. Proviso to Rule 3 contemplates that if the Member of the National Human Rights Commission is in receipt of the pension other than the disability or war pension in respect of any previous service under the Government or the Union or the Government of the State, then his salary in respect of service as a Member shall be reduced by the amount of pension. Apparently, the case of the V.S. Mallimath (supra) is clearly distinguishable as Rule 3 of (Salaries, Allowances and Other Conditions of Services), Rules, 1993 specifically contemplated deduction of pension from the salary payable to the Member of National Human Rights Commission whereas there is no such rule of Konkan Railway Corporation that the salary of the Chairman-cum-Managing Director shall be reduced by the pension, if any, received by such Chairman-cum-Managing Director for the services rendered by him to the Union Government. The service of a member to the National Human Rights Commission cannot be equated with the service in a Corporation. On the basis of ratio of said judgment it cannot be inferred that the service as CMD of respondent no.4 has to be treated as service in connection with the affairs of the Union.*

6. 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 petitioner is entitled to be paid the equal pay for equal work as is being paid to the other officers under the Commission for rendering service for same number of working hours. Counsel submits that after resuming office, the petitioner came to know that the salary fixed for the petitioner would be excluding the amount of pension received from his previous service, i.e., as a Professor in the Punjab

University, Chandigarh. On coming to know this fact, he sent a representation to the Secretary, Ministry of Minority Affairs. A reply to the same was sent which was highly unsatisfactory, as such, the petitioner has been constrained to file this writ petition.

7. Learned counsel for the respondents refuted the argument of learned counsel for the petitioner. 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 had accepted the appointment as per those terms and made representation at the fag end of his tenure and filed the writ petition. It is his submission that such a provision was valid and justified and the same was recognized in ***V.S. Mallimath vs. Union of India and Anr.*** (2001) 4 SCC 31 .

8. In the counter affidavit, it is asserted that the 1995 Rules were framed under Sub Section (5) of Section 4 of National Commission for Minorities Act, 1992. The Rules as framed was approved by the Parliament. Rule 3 is an integral part of the aforesaid Rules. Further as per Department of Personal and Training OM No. 3/13/2008-Estt.(PayII) dated 11.11.2008, the ceiling of drawal of pay plus gross pension for persons re-employed in Government service after retirement was fixed at Rs.80,000/-. In accordance to this, para 11 of the Rules, 1995 states the following:-

> *"The salaries, allowances and conditions of service of the Chairperson and the Members for which no express provision has been made in these Rules will be as those applicable to a Secretary to the Government of India from time to time."*

9. Moreover, this provision for allowing salary after deducting pension portion to retired employee on further re-employment is uniformly applied across all Government establishments. The Chairperson and the Members of the Commission are treated at par. Mr. Naseem Ahmad Chairperson and Mr.T.N. Shanoo Member were also drawing salary after deducting the pension received by them. Ms. Mabel Rebello, Member has stopped drawing pension from her previous office Rajya Sabha Secretariat and as a result, drawing the full salary of Rs.80,000/-. The other members, namely, Mr. Praveeen Davar and Mr. Dadi E. Mistry were never employed in any Central or State Government/Union Territory and thus drawing the full salary of Rs.80,000/-. Ms. Farida Abdullah Khan, Member was drawing full salary as she was not a retired person. Thus the principal of equal pay for equal work has been adhered with. The petitioner was serving under the State Government and this Rule was applicable in his case as well.

10. We have considered the respective submissions of learned counsel for both the parties.

11. It is not in dispute that Rule 3 of the Rules 1995 along with the proviso was in existence when the post of Member of National Commission for Minority was notified to which the petitioner applied and was selected. It is also not in dispute that the terms were conveyed to the petitioner for acceptance and thereafter 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 it may not be permissible for him to challenge the action of the respondent. At the time of acceptance, he knew that he would be given pay after the deduction of pension which he

was already drawing. The petitioner had accepted membership of the National Commission of Minorities by choice and not out of compulsion. However, having regard to the fact that the constitutional validity of the aforesaid proviso to Rule 3 of Rules 1995 is challenged, it will be necessary to examine the issue.

12. The question is whether such a proviso becomes unconstitutional merely because the service rendered by the petitioner as a Member of National Commission for Minorities is unrelated to the services rendered by him as a Professor in the Punjab University.

13. 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 the 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 Chief Justice of Kerala High Court was reduced. He challenged this pay fixation by filing writ petition under Article 226 of the Constitution contending that his tenure as the 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 had 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 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."*

14. This judgment was considered in ***Shri E. Sreedharan***(supra), where the petitioner retired from Indian Railways. After his retirement, through a process of selection by Public Enterprises Selection Board, which was approved by Appointment Committee of the Cabinet, the proposal for the appointment of the petitioner as CMD, Konkan Railway Corporation was approved. According to the Appointment Committee of the Cabinet, the scale of pay was to be in terms of schedule A of Pay of Rs.9000-10000 for a period of five years or till the completion of the Konkan Railway Project whichever is earlier. The petitioner joined as Chairman-cum-Managing Director of Konkan Railway Corporation. However, after two years of joining he was issued a letter conveying the sanction of the President to his appointment as Chairman-cum-Managing Director and there was a stipulation regarding pay whereby the basic pay of the petitioner was reduced by Rs.4000/- per month on account of pension he was receiving. Aggrieved by the deduction of his

pay by Rs.4,000/- per month on account of pension, the petitioner made a representation which was not acceded to. Thereafter, he filed the writ petition. The Union of India in that case relied upon V.***S.Mallimath*** (supra), however, the case was distinguished on the ground that unlike V.S. Mallimath**,** there was no rule of Konkan Railway Corporation that the salary of the Chairman-cum-Managing Director shall be reduced by pension, if any, received by the said Chairman-cum-Managing Director for the services rendered by him to the Union Government. That being so, clause 3 of the letter stipulating deduction of Rs.4000/- as pension per month from the revised scale was set aside holding that the respondents were not entitled to deduct any amount on account of pension from the salary of the petitioner. The respondent was accordingly directed to pay the entire amount deducted by them on account of pension, from the pay of the petitioner along with interest. This case is clearly distinguishable as in the instant case Rule 3 of Rules 1995 specifically contemplated deduction of pension from the salary payable to the Member of National Commission for Minorities.

15. In fact, the case is squarely covered by the decision rendered by the Division Bench of this Court in ***Berjinder Singh vs. Lt. Governor of Delhi & Ors. and L. Mansingh vs. UOI & Ors.,*** 2012 ELR (Delhi) 649 where the petitioners were appointed as Chairman of Delhi Electricity Regulatory Commission and Chairperson of Petroleum and Natural Gas Regulatory Board respectively. There was a provision of fixation of pay contained in the rules in both the regulatory bodies which, inter alia, provided 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

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 were drawing from their erstwhile departments where they earlier served. In that case reliance was placed on ***Lt. Gen. (Retd.) Dr. M.C. Bhandari v. State of Uttarakhand and others,*** W.P. No. 182 (SB) of 2008 decided on 15th April, 2010.

16. Repelling the contentions, it was observed as under:-

> *"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."*

17. The present case is squarely covered by this judgment. There is a proper justification and rationale for such a proviso relating to deduction of pension. The plea that the petitioner was not serving under the Union is without any substance as he was working under the State Government. The question of discrimination also does not arise as it is the total

emoluments drawn by the petitioner which has to be taken into consideration with pay and pension. Moreover, as detailed in the counter affidavit, the petitioner has not been discriminated as the Chairperson-Sh.Naseem Ahmad and another member-Sh. T.N. Shanoo are also drawing the salary after deducting the pension whereas two of the members were never employed in any Central or State Government. One of the member is not a retired person whereas one of the member although was working in Rajya Sabha Secretariat but has requested for stoppage of pension from her previous department as a result of which she is drawing full salary of Rs.80,000/-.

18. As per Section 6 of the National Commission for Minorities Act, 1992 salary of the Chairman and the Members of the National Commission have to be paid out of the grants from the Central Government. The grants are given under sub-Section 1 to Section 10 of the Act. The petitioner was earlier a professor in the Punjab University, Chandigarh and was receiving salary from the said University, which is under the State of Punjab. We do not see any reason why the said rule should be struck down on the pretext that the pension is not a bounty but a right for the past service. To accept the plea would be stretching and expanding the proposition. The petitioner was working as a member of the Commission, post his retirement as a Professor. The petitioner was paid pension and he has not been denied the said right to receive pension. The pension was accounted and taken into consideration, for the salary paid in the new employment as a member of Commission. Consequently, the pension was set off from the total salary. This was as per the applicable service Rules and terms of employment. The pension was never reduced, but the salary was proportionately adjusted. Assuming

that the petitioner had continued in service in the State Government or was on deputation in the Central Government, notwithstanding the date of retirement, the petitioner would not have received both pension and the salary. It would be incorrect and wrong to state that while fixing the salary payable, the pension paid by the State of Punjab for the employment under the said State cannot be accounted and taken into consideration. The Central Government and the State of Punjab may be two separate employers, but nevertheless they do fall in the category of employment under the State and provisions of Part XIV of the Constitution of India, which relates to a Government employee, apply. The pension payable to a retired Government employee as a matter of principle followed and accepted is accounted on new or re-employment in the government. This principle has been applied and has withstood the test of time and as noticed above was upheld by the Supreme Court in ***V.S. Mallimath*** and by the Delhi High Court in ***Berjinder Singh*** (supra).

19. The result of the aforesaid discussion is that the petition is without any merit and the same is accordingly dismissed. However, there would be no order as to costs.

**SUNITA GUPTA**
**JUDGE**

**SANJIV KHANNA**
**JUDGE**

**AUGUST 11, 2016**
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