

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.06.2017

Coram

The Hon'ble Mr. Justice Nooty Ramamohana Rao
and
The Hon'ble Mr. Justice S.M. Subramaniam

W.P.No.33063 of 2016

Justice A.K. Rajan,
s/o A. Karuppan Chettiar,
S-79, 16th Street,
Anna Nagar,
Chennai - 40.

... Petitioner

Versus

1. Union of India,
Represented by
The Secretary to Government of India,
Ministry of Law, Justice and Company affairs,
South Block, Parliamentary House,
New Delhi.
2. The Registrar General,
High Court of Madras,
Chennai - 104.
3. The Government of Tamil Nadu,
Represented by its Secretary,
Department of Law,
Fort St. George,
Chennai - 600 009.
(R-3 impleaded as per order, dated 22.09.2016, by
in this Writ Petition).
4. The Secretary,
Department of Home,
Government of Tamil Nadu,
Fort St. George,
Chennai.

5. The Secretary,
Finance Department,
Government of Tamil Nadu,
Fort St. George,
Chennai.

(R-4 & R-5 are impleaded as per order,
dated 19.10.2016 in this Writ Petition).

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of mandamus directing the respondent to add 10 years of actual practice at the bar be added to the total pensionable service, of the petitioner, in part III of the first schedule to the High Court and Supreme Court Judges (Salaries and Condition of Services Amendment) Act, 2016 (13 of 2016).

(Prayer amended as per order dated 08.03.2017, by N.R.R.J & S.M.S.J., in W.M.P.No.4231 of 2017, in this Writ Petition)

For Petitioner : Mr. A. Thiyagarajan,
Senior Counsel for
M/s.S.Ramesh Kumar

For Respondent-1 : Mr. G. Rajagopalan,
Additional Solicitor General
assisted by Mr.B.Rabu Manohar

For Respondent-2 : Mr.E. K. Kumaresan

For Respondents 3-5: Mr.K.Venkataramani for
Additional Advocate General,
assisted by
Mr.P.S.Shivashanmuga Sundaram,
Special Government Pleader,
and
Mr. S. Babu, Govt. Advocate

O R D E R

The writ petitioner was a former Judge of this Court. He seeks a writ of mandamus, for addition of ten years of actual practise at the Bar to the pensionable service of those judges, regulated by Part III of the first schedule of the High Court and Supreme Court (Salaries and Condition of Services Amendment) Act, 1954.

2. The case of the petitioner is that, after obtaining B.L degree from the Madras law College, he got enrolled as an Advocate, in August, 1968, and practised in this High Court extensively. He has also obtained Masters Degree in Law, and also rendered service as a part-time Lecturer of the Madras Law College, for about 11 years, teaching Constitutional Law and International Law. He was recruited directly as a District Judge on 16.11.1987, after 19 years of standing at the Bar. He was later elevated to the Bench of this Court on 29.09.2000, and demitted the Office on 24.01.2005. It is the case of the petitioner that, for the purpose of settling pension, the total qualifying length of his service has been reckoned as '21 years 5 months and 26 days'. As he had not put in 33 years of service, he was not granted full pension, but only a portion thereof, has been settled.

3. According to the learned Senior Counsel appearing for the writ petitioner, since the Hon'ble Supreme Court has already approved the concept of 'One Rank and One Pension', in the judgment rendered in (P.Ramakrishnam Raju Vs. Union of India), reported in (2014) 12 S.C.C. 1, the pension of the writ petitioner ought to have been settled by following the principle enunciated by the Hon'ble Supreme Court, in the aforementioned case. He ought to have been granted pension at par with those Judges, who are elevated from Bar. It is also contended by the learned Senior Counsel for the writ petitioner that the Tamil Nadu Higher Judicial Service Rules did not provide for addition of any length of practise required to be put in for appointment as Judicial Officers, for the purpose of calculation of pension. Whereas, for such of those members of the Bar, who have been elevated to the Bench of the High Court, the minimum requisite length of practise at the Bar, viz., of 10 years duration, is ordered to be added to the actual length of service rendered by them as Judges of the High Court. Since those, who are appointed as Judges of the High Court from Bar as well as from Higher Judicial Service, occupy the same status, and also, perform identical nature of duties and responsibilities as High Court Judges, the artificial distinction between Part I and Part

III of the first Schedule of the Act should have been done away with. This artificial distinction is resulting in invidious discrimination, inasmuch as, the writ petitioner was not added any length of his practice at the Bar, for the purposes of fixation of pension.

4. Heard Shri. Thiagarajan, the learned Senior Counsel for the writ petitioner, Shri. Rajagopalan, the learned Additional Solicitor General, assisted by Shri.B. Rabu Manohar, learned counsel, for the first respondent/Union of India, Shri.E.K.Kumaresan, the learned counsel for the second respondent, Shri.K.Venkataramani, learned Additional Advocate General, assisted by Shri.P.S. Shivashanmuga Sundaram, the learned Special Government Pleader, and Mr.S.Babu, the learned Government Advocate for the respondents 3 to 5.

5. The Parliament has enacted the High Court Judges (Salaries and Condition of Services Amendment) Act, 1954 (henceforth, referred to as 'the Act', for the sake of brevity). The pension payable to Judges has been dealt with in Section 14 of the Act, which declared that every Judge shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part I of the first schedule, unless, he has completed not less than 12 years of service for pension, or he has attained the age of 62 years, or his retirement is medically certified to be necessitated by ill health. Section 14 A has been inserted by way of Amending Act 13 of 2016. By virtue of this provision, a period of 10 years shall be added for the purpose of pension to the service of a Judge, who is appointed as such, under sub-clause (b) of clause (2) of Article 217 of the Constitution. In Section 15, the special provision for pension in respect of Judges, who are drawn from service has been provided. It is set out thereunder that, every Judge, who has already 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 of the Act. The First Schedule of the Act thus contains Part I, II and III. Part II was already omitted by the Amending Act 13 of 2016, leaving Part I and Part III to the First Schedule intact. As per Part I, which applied to a Judge, who has not held any other pensionable post under the Union or State, for service as a Judge in the High Court, a sum of Rs. 34,350/- per annum, for each completed year of service is liable to be paid, but, however, in no case, the pension, so payable, shall exceed Rs.4,80,000/- per annum. Whereas, when it comes to Part III, which applied to a Judge, who has already held any other pensionable post under the Union or a State, and who has not

elected to receive the pension payable under Part I, para 2 thereof spelt out as under:-

" 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.16,020/- per annum in respect of each completed year of service for pension Provided that the pension under clause (a) and the additional pension under clause (b) together shall in no case exceed Rs.5,40,000/- per annum in the case of a Chief Justice and Rs.4,80,000/- per annum in the case of any other Judge."

6. From a reading of Para 2 of Part III of the first Schedule, the following position would emerge: ' while calculating pension, to which a Judge under Part III of the First Schedule is entitled to, his service as a Judge of the High Court has to be treated as service to the former service, as qualifying service for payment of pension. That apart, a special additional pension of Rs.16,020/- per annum in respect of each completed year of service as a Judge of the High Court is also liable to be added, provided, the pension under clause (a) and the additional pension under clause (b) together shall not exceed Rs.4,80,000/- per annum, in the case of High Court Judges. In other words, if a Judicial Officer, like that of the writ petitioner herein, who has rendered more than 12 years of service, and thereafter, rendered a little more than 4 years of service as High Court Judge, the entire length of service as High Court Judge would get added to his former service making it 17 years in all, and accordingly, the pension payable to him for the service rendered by him prior to being appointed as Judge of the High Court would be worked out. To put it in other words, for the purpose of calculation of pension in the above illustrated case, 17 years will be taken as the completed years of service for pension, but not 13. Apart from the pension payable for the 17 years of service, such a Judge is also entitled to be paid a sum of $(Rs. 16,020/- \times 4) = Rs.64,080/-$ per annum, by way of additional pension. But, however, the only

restriction is on the maximum amount, that can be paid to a Judge and it is pegged at Rs.4,80,000/- per annum, comprising of both pension and additional pension.

7. Thus, such of those Judges, who have been elevated from the State Higher Judicial Service, they are sought to be paid 'additional pension' at the rate of Rs.16,020/- per annum, for every completed year of service, as a High Court Judge, apart from computing the entire length of service put in by them to the service, which they have actually rendered in the State Higher Judicial Service.

8. In the given circumstances of the case, we are of the opinion that the distinction between Part I and Part III, in the matter of regulation of Pension payable to High Court Judges is, in effect and substance, sustainable, for the reason that those are governed by Part III, apart from receiving pension for their previous service, prior to elevation, they are also paid additional pension per each completed year of service as a High Court Judge. Whereas, for those Judges governed by Part I, the question of payment of any additional pension would not arise, and, on the other hand, by virtue of the provision contained under Section 14 A, they could only add 10 years of their standing at the Bar for payment of pension, and even while doing so, the maximum amount of pension payable, has also been pegged at Rs.4, 80,000/- per annum. In other words, a component similar to that of the additional pension is cushioned therein.

9. It is no doubt true that, the Hon'ble Supreme Court, in P.Ramakrishnam Raju's case, (referred to supra) has mooted the concept of 'One Rank One Pension', but, however, it is for the Parliament guidance, such an idea has been mooted. The Parliament has not yet acted, by doing away with the First Schedule to the Act, and consequently, it will not be permissible for us to ignore the distinction maintained between Part I and Part III of the Schedule thereof. It is also appropriate for us to draw the attention of the State Government to reconsider their decision, to add the minimum length of standing at the Bar required to be appointed as a Judicial Officer, at least to the qualifying pensionable service for the purpose of payment of pension to such of those Judges, who are governed and regulated by Part III of the first schedule to the Act. We hope the appropriate decision of the Government would emerge in this regard, at the earliest.

10. With this, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sd/mrr

To

1. The Secretary to Government of India,
Union of India,
Ministry of Law, Justice and Company affairs,
South Block, Parliamentary House,
New Delhi.
2. The Registrar General,
High Court of Madras, Chennai - 104.
3. The Government of Tamil Nadu,
Represented by its Secretary,
Department of Law,
Fort St. George, Chennai - 600 009.
4. The Secretary,
Department of Home,
Government of Tamil Nadu,
Fort St. George, Chennai.
5. The Secretary,
Finance Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

+1cc to M/s.S.Rameshkumar, Advocate, S.R.No.42738
+1cc to M/s.B.Rabu Manohar, Advocate, S.R.No.42746
+1cc to the Government Pleader, S.R.No.43079

W.P.No. 33063 of 2016

KS(CO)
CU(11/07/2017)