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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.6380 of 2018 (O&M)

Date of decision: August 14, 2018

Justice (Retd.) Raj Rahul Garg

.....Petitioner

Versus

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. B.S. Patwalia, Advocate for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Arun Gosain, Central Government counsel
for respondent No.1.

Ms. Amrita Singh, Advocate for respondents No.2 and 3.

Mr. Harmanjit Singh Jugait, Advocate for respondent No.4.

A.B. CHAUDHARI, J

By the present petition, the petitioner, Justice (Retd.) Raj
Rahul Garg has sought a writ of mandamus praying for all retiral
dues/benefits including pension to which she would be entitled to by
counting her service first in the Subordinate Judicial Service w.e.f.
11.05.1981 to 31.07.2014 and the service rendered as a Judge of the High
Court of Punjab and Haryana, from 25.09.2014 to 04.07.2016, along with
interest @ 18% per annum.

FACTS

The petitioner entered the subordinate judiciary in the year

1981 and retired from service as a District Judge, on 31.07.2014. Her name was recommended, in December 2013, well in advance before her retirement as District Judge, for appointment to the office of Judge of this Court. Though, she retired on 31.07.2014 as a District Judge, the appointment to the office of Judge of this Court did not materialize. But on 25.09.2014, i.e. after her retirement as a District Judge, she came to be appointed to the office of Judge of this Court. She became permanent Judge of this Court and served as such till attaining the age of 62 years. She retired on 04.07.2016 as such. Respondent No.2 recommended the case of the petitioner to respondent No.4 for granting her pension as is admissible to Judge of this Court, she having worked as such, vide Annexure P-3 colly. Obviously, there was gap of 1 month and 24 days between her retirement as District Judge and joining as Judge of this Court on 25.09.2014. Her case for pension was accordingly, prepared and sent to respondent No.4, vide letter dated 06.04.2016. However, vide communication dated 04.05.2016 (Annexure P-4), Under Secretary to the Government of India informed respondent No.4 that there was gap of 01 month and 24 days between the date of retirement of the petitioner as District Judge and thereafter, as a Judge of this Court, and therefore, there was break in service. The said break in service could not be condoned or said period of service cannot be added by taking recourse to Section 16 of The High Court Judges (Salary and Conditions of Service) Act, 1954 (for brevity 'Act of 1954') because the said provision would apply only if there is shortfall in the total service. An example of Justice (Retd.) Sat Paul

Bangarh was also given in the said letter to buttress the stand that the petitioner would not be entitled to count the period of her service as Judge of this Court for the purposes of pension. Chagrined with the penumbra put by respondent No.4 through letter dated 04.05.2016 (Annexure P-4) on the service rendered by the petitioner as a Judge of the High Court, the present writ petition has been filed.

ARGUMENTS

In support of the writ petition, Mr. D.S. Patwalia, Senior Advocate for the petitioner vehemently argued that the respondents have not correctly applied the provisions of Act of 1954 in the facts of the case of the petitioner. According to him, the recommendation of the petitioner as Judge of this Court was made seven months before her retirement as District Judge, i.e. in December 2013 and the warrant of her appointment to the office of Judge of this Court did not materialize till her retirement as District Judge on 31.07.2014. That is for no fault of the petitioner. Nevertheless, fact remains that she was appointed as a Judge of this Court on 25.09.2014 and admittedly, served as such till the date of her retirement, i.e. 04.07.2016. He contended that refusal to count the said service as Judge of this Court by adding the same to the earlier service as District Judge, is misconceived and misplaced and on a wrong interpretation of the relevant provisions of the Act of 1954. According to him, if at all the break of 1 month and 24 days was found, by applying Section 16 of the Act of 1954, the same could easily be condoned or the said period of service could be added to the service of the petitioner. The

stand taken that Section 16 of the Act of 1954 applies only for shortfall is not legal and correct. Apart from that, learned Senior counsel, further contended that actual period of service as Judge of this Court, i.e. other than the period of 1 month and 24 days could be added rather than depriving the petitioner of the entire period of her service as Judge of this Court. He, therefore, submitted that the decision not to grant pension accordingly, is liable to be quashed and set aside and the petitioner would be entitled to the relief claimed with interest.

Per contra, learned Additional Solicitor General of India for the respondent-Union of India opposed the writ petition on the ground that the legal provisions of Act of 1954 do not anywhere permit the condonation of period of break of 1 month and 24 days or addition of the said period along with service period in the subordinate judiciary. There is no provision for doing so. Therefore, the respondents are justified in ignoring the period for which the petitioner served as Judge of this Court and the respondents are right in granting her pension for the period of service that was rendered by her in the subordinate judiciary. Learned counsel for respondent No.4 submitted that still they have added the pensionary benefits, which are required to be added in accordance with Sub Clause (b) of entry No.2 in Part-III of the First Schedule to the Act of 1954. Learned Additional Solicitor General of India for the respondent-Union of India submitted that similar exercise was done in the case of Justice (Retd.) Sat Paul Bangarh and the same can be treated as a precedent. Learned counsel for the respondents submitted that the break in

service of 1 month and 24 days has in fact, occurred and it is no gainsaying that the petitioner was not responsible thereof as ultimately, it is the procedure and process which takes time for appointment to the office of a Judge of a High Court. Nevertheless, fact remains that there is gap of 1 month and 24 days and therefore, the question of adding the service of the Judge of this Court would not arise, in the absence of any provision to that effect. Learned Additional Solicitor General of India also relied on the decision of the High Court of Judicature at Madras, in the case of **Justice A.K. Rajan** versus **Union of India and others**, decided on 16.06.2017, and submitted that the petitioner's case is also covered by the said decision. Consequently, according to him, the petitioner is not entitled to any relief in law.

CONSIDERATION

We have heard learned counsel for the rival parties at length.

Following facts are not in dispute:-

- (i) The petitioner served in the subordinate judiciary from 1981 till she retired as a District Judge, on 31.07.2014;
- (ii) She was appointed to the office of Judge of this Court, on 25.09.2014 and served till 04.07.2016 on which date, she retired upon attaining the age of 62 years.

The question is about computation/addition of her service as Judge of this Court for the period from 25.09.2014 till 04.07.2016 to the service already rendered by her in the subordinate judiciary as stated earlier.

The appointment to the office of a Judge of a High Court is

governed by Article 217 of the Constitution of India, which reads thus:-

“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 after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and [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]]:

.....

(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;”

Perusal of Clause 2(a) of Article 217 of the Constitution shows that a person can be appointed to the office of a Judge of a High Court who has held a judicial office for a period of atleast ten years. The petitioner would fall in this category. Needless to say that Sub Clause (b) of Clause 2 of the Article 217 of the Constitution deals with the appointment of an Advocate of a High Court for a period of at least ten years, with which we are not concerned.

A careful perusal of Clause (1) of Article 217 of the Constitution of India shows that a Judge of a High Court is appointed by

the President if he has held judicial office for a period of ten years. To repeat, the appointment to the office of a Judge of the High Court from the category contemplated by Clause 2(a) of Article 217 of the Constitution is not by way of promotion or in continuation of the service as a District Judge.

It would now be pertinent to note the provisions of the Act of 1954.

Section 2(1)(g) & (h) of the Act of 1954 read thus:-

“2(g) 'Judge' means a Judge of a High Court and includes the Chief Justice, ⁴(an Acting Chief Justice, an additional Judge and an acting Judge of the High Court);

⁵(gg) 'Pension' means a pension of any kind whatsoever payable to or in respect of a Judge, and includes any gratuity or other sum or sums so payable by way of death or retirement benefits;

2(h) 'Service for pension' includes—

- (i) actual service;*
- (ii) forty five days or the amount actually taken whichever is less, of each period of leave on full allowances;*
- (iii) joining time on return from leave out of India;”*

Section 14 of the Act of 1954 reads thus:-

“14. 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;.....”

Entry 1 of Part-I of the First Schedule reads thus:-

“1. The provisions of this part apply to a Judge who has not held any other pensionable post under the Union or State or a Judge who having held any other pensionable post under the Union or State has elected to receive the pension payable under this part.”

The aforesaid entry 1 manifests that the provisions of Part-I of the First Schedule shall apply to a Judge who has not held any other pensionable post. In other words, Part-I of the First Schedule applies to a person appointed to the office of the Judge of a High Court from the category of practitioner advocates in the High Court. We are not concerned with the said Part-I in the present case.

Part-II of the First Schedule has been omitted.

Now coming to Part-III of the First Schedule, entry 1 thereof reads thus:-

“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.”

A bare reading of this entry 1 shows that it applies to a Judge who has held any pensionable post. It is thus, clear that Part-III will apply to the Judge like the petitioner who held a pensionable post.

Now coming to the relevant portion of Part-III of the First Schedule, we quote entry 2 of Part-III, which reads thus:-

“2. The pension payable to such a Judge shall be:

(a) ¹the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, ²his 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 (.....)”[1 and 2 added by us for emphasis]

We have divided entry 2(a) in two parts for making plain interpretation. Part 1 relates to counting of service rendered in the subordinate judiciary. Part 2 says his service as a Judge will have to be treated as service therein (i.e. in the office of Judge of the High Court). Reading of Part 1 and Part 2 harmoniously and in juxtaposition must result into blending of the period of both the services. If blending of both the periods of service is not made, her actual service as a Judge of the High Court for pension purposes will go in oblivion. But the service as Judge of the High Court will only be 'actual service' as mandated by definition of 'service for pension' in Section 2(1)(h) of the Act of 1954.

In the present case, actual service of the petitioner would be from 25.09.2014 till 04.07.2016. Now upon reading second part of Clause (a) of entry 2 of Part-III of the First Schedule what we find is that the pension to which the petitioner is entitled to as a member of the subordinate judicial services till 31.07.2014 will have to be clubbed/calculated/blended with her actual service as a Judge of the High Court from 25.09.2014 to 04.07.2016 for pension. To say, in other words,

the service of the petitioner as a Judge of this Court for the period from 25.09.2014 till 04.07.2016 will have to be blended with the service rendered by the petitioner from 1981 till she retired as District Judge, on 31.07.2014, and accordingly, the pension will have to be calculated.

It is not in dispute and as fairly stated by learned Additional Solicitor General of India for the respondent-Union of India, in accordance with Clause (b) of entry 2 of Part-III of the First Schedule, a special additional pension per annum for each completed year of service for pension is also payable. We find that the learned Additional Solicitor General of India is right in saying so in view of insertion of the word “and” at the end of Clause (a) of entry 2 of Part-III of the First Schedule. We accept the said submission.

To conclude, it is manifestly clear that what is to be blended is the 'actual service' rendered as a Judge of the High Court to the service rendered by the petitioner from 1981 till 31.07.2014 as service, for pension and accordingly, the pension will have to be calculated as judge of High Court.

We then turn to the other submissions made by the learned counsel for the rival parties. Having interpreted the above provision of Part-III of the First Schedule in the above manner, we are of the firm view that the submission that the gap of 1 month and 24 days acts as a legal filibuster clearly falls in the realm of irrelevancy. The gap of 1 month and 24 days which has been projected and made the issue for not calculating the 'actual service' of the petitioner as Judge of this Court is a

misconception. As a sequel, the question of application of Section 16 of the Act of 1954 for condoning the said period of 1 month and 24 days or for addition of said period in the service does not at all arise. The same is of no relevance whatsoever. The service rendered by the petitioner as member of the subordinate judiciary falls in one compartment while her 'actual service' as a Judge of High Court falls in another. And while calculating service for pension, blending of 'actual service' as a Judge of High Court will have to be made with the previous service. In other words, it is only the 'actual service' that is required to be treated as service for the purpose of blending. We, therefore, find that there is no need to invoke Section 16 of the Act of 1954 in the present case.

The submission made by the learned Additional Solicitor General of India for the respondent-Union of India based on the judgment of Madras High Court in Justice A.K. Rajan's case (supra), with respect, does not appeal to us. The said decision has no application in the present case. The petitioner in the said decision wanted that ten years period of his practice as an Advocate should also be added to his service in the subordinate judiciary. In other words, the said petitioner wanted the benefit of both the categories, namely, his service in the subordinate judiciary as well as computation of period of 10 years standing at the Bar. Thus, the petitioner therein wanted to ride two horses to get advantage of both Part-I and Part-III together of the First Schedule. Such a claim by him for clubbing Part-I and Part-III was wholly misconceived and misplaced and rightly declined.

The upshot of the above discussion is that the present writ petition must succeed. As a sequel, the following order is inevitable:-

ORDER

- (i) **CWP No.6380 of 2018** is allowed;
- (ii) Respondent No.4 shall blend the 'actual service' of the petitioner from 25.09.2014 to 04.07.2016 as a Judge of the High Court with her service from 11.05.1981 to 31.07.2014 as a Judge of the subordinate judiciary and then make calculations of the pension, accordingly as judge of High Court;
- (iii) The above exercise shall be done within a period of 8 weeks from the date of receipt of certified copy of this order;
- (iv) The prayer for grant of interest on the pension is declined;
- (v) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

August 14, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**