

12.07.2024
SL No.144
Court No.24
Ali

WPA 4108 of 2018

**Dipak Saha Ray
Versus
Union of India & Ors.**

Mr. Snehatosh Majumder,
Mr. Amarnath Ghosh,
Mr. Sattwik Majumder,
Mr. S. Das

...for the petitioner.

Mr. Sirsanya Bandyopadhyay,
Mr. Subhendu Sengupta

.....for the State.

The present petitioner was appointed as a Munsif from the Bar in the West Bengal Judicial Service in the year 1982. Thereafter, he was posted in several places of posting and served as Judicial Magistrate, SDJM, Civil Judge (Senior Division) and ultimately promoted to the post of Additional District and Sessions Judge in the West Bengal Higher Judicial Service on 30th June, 2011.

Petitioner, on reaching the age of superannuation, Superannuated as Chief Judge, City Sessions Court, Kolkata on 30th June, 2021. At the time of superannuation he was in the pay scale of Rs. 70,290.00/- to Rs. 76,450.00/-. At the time of superannuation he used to draw the pay of Rs. 73,317/-.

It is the case of the petitioner that during his service as a Judicial Officer under the district judiciary his name was recommended for elevation

as a Judge of Calcutta High Court. However, the petition was ultimately elevated and appointed as a permanent Judge of this Court on 9th of April, 2012.

The petitioner superannuated as a Judge of High Court, Calcutta on 1st of June, 2013. It is not out of a place to mention herein that as a Judge of this High Court his fixed pay was Rs. 80,000/-. After his superannuation as a Judge of Calcutta High Court the petitioner was appointed as a Presiding Officer of the Central Government Industrial Tribunal cum Labour Court, Kolkata on 8th October, 2013.

On 11th of November, 2013 the Government of India provisionally fixed the pay of the petitioner as the Presiding Officer of the Central government Industrial Tribunal cum Labour Court, Kolkata at Rs. 80,000.00/- (less the anticipated pension of Rs.40,000.00/-) equivalent to his last pay of Rs. 80,000.00/- drawn as a High Court Judge of this Court.

On 1st of September, 2014 the petitioner received the Pension Payment Order (PPO) dated 8th of July, 2014 from the Government of West Bengal and came to learn that the pension on account of his service and superannuation from the level of District and Sessions Judge had been fixed at Rs.36,685.00/-.

After receiving the Pension Payment Order (PPO) petitioner made a representation to the Government of India to fix/adjust his pay derivable as Presiding Officer of the Central government Industrial Tribunal cum Labour Court, Kolkata deducting Rs. 36,685.00/- instead of Rs. 40,000.00/- per month. Thereafter, on the month of May, 2015 the petitioner came to know about the fixation of his "Pension" by the Government of India on account of his service as a permanent Judge, High Court, Calcutta on receipt of a copy of the letter dated 28.04.2015 by the Assistant General manager SBI, Centralized Pension Processing Center, Kolkata that his "Pension" as High Court Judge had been fixed at Rs.1335.00/- per month.

After receiving such intimation the present petitioner has issued a demand of justice for fixation of his payment at Rs.40,000/- per month by the Government of India nothing has been answered from the Central Government. Thus, the instant writ petition has been preferred.

Mr. Snehatosh Majumer, learned advocate for the petitioner submits that the correspondence of the Central Government regarding fixation of pay of the present petitioner as the Judge of this Court is illegal and arbitrary. He submits that the pension should be fixed on the basis of the pay which was last drawn by the present petitioner as a Judge of

this Court. He further submits that the said issue was cropped up before the Hon'ble Apex Court in ***Union of India, Ministry of Law & Justice Versus Justice (Retd) Raj Rahul Garg (Raj Rani Jain) and Others (Civil Appeal No. 4272 of 2024)*** reported in ***(2024) SCC On Line SC 321***.

Learned advocate for the petitioner submits that the Hon'ble Supreme Court in deciding the issue has dealt with the specific provisions of Constitution of India and role of Judges in the Country and the pension purview of the Judges.

After considering the entire materials the Hon'ble Supreme Court is of view that the pension of the petitioner should be paid according to the pay last drawn as a Judge of High Court.

Heard the learned advocates, perused the relevant annexures, I have also perused the report in the form of affidavit filed by the Union of India. It appears from the report that the pension of the present petitioner being a retired High Court Judge of Calcutta High Court was fixed by the concerned authority of the Central Government according to the provisions of para 2(b) of part III of the 1st schedule of ***The High Court Judges (Salaries and Conditions of Service) Act, 1954***, I have perused the provision. The provision enumerated that the pension of the present petitioner was fixed according to the pension under the ordinary rules of Service as

West Bengal Judicial Service as reported to be admissible as Rs. 36,685.00/- with effect from 01.07.2011 and Special Additional Pension of Rs.16,020.00/- per annum which was reported to be admissible for rendering about one completed year of service as High Court with effect from 02.06.2013. The said provision was also referred before the Hon'ble Apex Court in the cited case of **Justice (Retd) Raj Rahul Garg (Raj Rani Jain)**.

After hearing of the parties the Hon'ble Apex Court in the similar fact situation has observed that:

“35. Pensionary payments to Judges constitute a vital element in the independence of the judiciary. As a consequence of long years of Judicial Officer, Judges on demitting office do not necessarily have the options which are open to members from other services. The reason why the State assumes the obligation to pay pension to Judges is to ensure that the protection of the benefits which are available after retirement would ensure their ability to discharge their duties without “fear or favour” during the years of judgeship. The purpose of creating dignified conditions of existence for judges both during their tenure as judges and thereafter has, therefore, a vital element of public interest. Courts and the Judges are vital components of the rule of law. Independence of the judiciary is hence a vital doctrine which is recognized in the constitutional scheme. The payment of salaries and dignified pensions serves precisely that purpose. Hence, any interpretation which is placed on the provisions of the Act must comport with the object and

purpose underlying the enactment of the provision.

36. We are, therefore, clearly of the view that the first respondent was entitled to the addition of the period during which she served as a Judge of the High Court to be added to the length of her service as a member of the district judiciary from 11 May 1981 to 31 July 2014. The break in her service must necessarily have no adverse implications in computing her pension for the simple reason that her service upon appointment as a High Court Judge was in pursuance of a recommendation which was made during her tenure as a Judge of the district judiciary.

32. The pensionary payments shall be computed on the basis of her last drawn salary as a Judge of the High Court. the arrears of pension shall be payable to the first respondent on or before 31 March 2024 together with interest at the rate of 6% per annum”.

Following the above observations of Hon’ble Supreme Court of India, it appears to me that the law has been settled that the present petitioner is entitled to get the pension according to the pay last drawn by him as a High Court Judge of the Calcutta High Court.

Under the above observation, I find merit in the instant writ petition. The concerned authority is directed to dispose the pension of the present petitioner on the basis of his last drawn salary as a Judge of Calcutta High Court. The arrears of

pension shall be payable within September 2024 with interest at the rate of 6% per annum.

Under the above observation, the application being **WPA 4108 of 2018** is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)