

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

214

CWP-1539-2023  
DECIDED ON: 09.01.2026

N.K. SUD AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Akshay Bhan, Senior Advocate with  
Mr. Abhijeet Singh Rawaley, Advocate and  
Mr. Rohit Sud, Advocate  
for the petitioner(s).

Mr. R.D. Sharma, DAG, Haryana.

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SANDEEP MOUDGIL, J (ORAL)

**Prayer:**

1. The petitioners have filed the present writ petition under Articles 226 and 227 of the Constitution of India seeking quashing the impugned order dated 18.08.2022 (Annexure P-9) issued by Respondent No.1, being illegal, arbitrary, and in violation of their constitutional rights and further directing the respondents to pay the petitioners the full salary and arrears due during their tenure as Lokayukta, Haryana, at par with a Judge of the High Court without deduction of pension, along with interest @12% from the date of assumption of office, and to ensure full pensionary benefits as Lokayukta in accordance with law.

**The conspectus of Facts:**

2. The petitioners are former Judges of this Court. Petitioner No.1 was appointed as Lokayukta for the State of Haryana under the Haryana Lokayukta Act, 2002 (in short as “2002 Act”), vide warrant of appointment dated 13.01.2006 and assumed charge on 16.01.2006. Petitioner No.2 was similarly appointed vide warrant dated 19.01.2011 and assumed charge on the same day, each for a fixed tenure of five years. At the time of their appointment, both petitioners were drawing pension as retired High Court Judges.

3. Under Section 6(4) and (5) of the Act of 2002, the salary, allowances and conditions of service of the Lokayukta are prescribed to be the same as those of a sitting Judge of the Supreme Court or the Chief Justice/Judge of a High Court, as the case may be, and such conditions cannot be varied to the disadvantage of the incumbent after appointment. However, while disbursing salary to the petitioners as Lokayuktas, the respondent-State deducted the pension being drawn by them as retired Judges.

4. Aggrieved by the deduction of pension from their salary, the petitioners submitted a joint representation dated 29.07.2021, which remained undecided, compelling them to approach this Court in CWP No.11214 of 2022. The said writ petition was disposed of on 25.05.2022 with a direction to decide the representation within a stipulated period. Thereafter, the respondent-State passed the impugned order dated 18.08.2022 rejecting the claim of the petitioners, giving rise to the present writ petition.

**Contentions:**

**On behalf of the petitioner:**

5. Learned counsel appearing on behalf of the petitioners contended that under Section 6(4) and (5) of the Haryana Lokayukta Act, 2002, the Lokayukta is entitled to salary and allowances at par with a sitting Judge of the High Court and that such conditions cannot be varied to his disadvantage after appointment. The Act does not provide for deduction or adjustment of pension while fixing such salary.

6. It was submitted that pension drawn by the petitioners as retired High Court Judges is a vested right earned for past constitutional service and has no nexus with the remuneration payable for services rendered as Lokayukta. In the absence of any statutory provision permitting such deduction, the impugned action of the respondents is illegal.

7. Learned counsel further contended that reliance placed by the respondents on constitutional provisions applicable to serving Judges is misconceived, as appointment as a High Court Judge is not a service under the State. Denial of full salary without deduction of pension, particularly when similarly situated persons have been granted such benefit, is arbitrary and violative of Article 14 of the Constitution of India.

**On behalf of the respondent**

8. Learned counsel for the respondents contended that the salary payable to the petitioners as Lokayuktas was correctly fixed after adjusting the pension drawn by them as retired High Court Judges, in accordance with the applicable constitutional provisions and principles governing payment of remuneration to former Judges. It was submitted that the petitioners could not be permitted to draw full salary equivalent to a sitting Judge in addition to pension, as such payment would amount to double benefit from the public exchequer.

9. It was further contended that the pay and allowances prescribed under Section 6 of the Haryana Lokayukta Act, 2002, are subject to constitutional limitations, including those relatable to conditions of service of Judges, and the respondents were justified in applying such principles while fixing the salary of the petitioners.

10. Learned counsel also submitted that the impugned order was passed after due consideration of the petitioners' representation and does not suffer from any illegality or arbitrariness warranting interference by this Court.

11. Heard counsel for both parties.

### **Analysis**

12. The core issue that arises for consideration is whether pension drawn by the petitioners as retired Judges of the High Court could legally be deducted from the salary payable to them during their tenure as Lokayuktas under the Haryana Lokayukta Act, 2002.

13. At the very threshold, it must be stated that the controversy does not admit of any equitable or administrative discretion. It turns entirely on constitutional structure, statutory command, and settled doctrine. Where the Constitution and a parliamentary enactment occupy the field, the executive interpretation must yield. The question is not whether the petitioners received a "double benefit", but whether the law permits the State to neutralise a constitutionally protected entitlement.

14. Article 221 of the Constitution functions as the lodestar for this court to deal with the issue raised herein which has been reproduced as under:

***Article 221 Salaries, etc., of Judges***

*(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.*

*(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:*

*Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.*

Where clause (1) of this provision mandates that the salaries and allowances of Judges of the High Court shall be such as are specified in the Second Schedule. Clause (2) erects an unqualified constitutional embargo that neither the rights in respect of salary nor those in respect of pension shall be varied to the disadvantage of a Judge after appointment. This protection is not ornamental but it is designed to preserve judicial independence by insulating Judges from financial pressure, whether during office or thereafter. Pension, therefore, is not a post-retirement largesse but a deferred component of constitutional remuneration, crystallised by service already rendered.

15. Moreover, the Second Schedule, read with Article 221, constitutes a complete and exhaustive code on the salary, allowances and pension of High Court Judges. For a retired High Court Judge, the Second Schedule continues to operate as a guiding constitutional norm. It does not contemplate, either expressly or by implication, any deduction on account of pension earned earlier in case of a retired High Court judge, for the obvious reason that his service as a High Court Judge is not prior government service per se but service under a constitutional office.

Therefore, when a statute grants parity of salary with a sitting High Court Judge, it imports this entire constitutional framework, within which deduction of pension is wholly impermissible.

16. This constitutional scheme is faithfully carried forward by Parliament in the High Court Judges (Conditions of Service) Act, 1954 (herein after referred to as “1954 Act”). It codifies pension as a statutory right flowing from constitutional status, while distinguishing service under the constitutional office from service in the Union or State. The Act recognises no principle of set-off or adjustment of such pension against remuneration payable for any subsequent office, unless Parliament itself so enacts. It is of decisive significance that a Judge of a High Court does not hold a civil post under the Union or a State. This proposition has been settled beyond cavil and marks the dividing line between constitutional office and public employment. Concepts familiar to service jurisprudence, such as re-employment, double emoluments, or adjustment of pension are thus alien to the constitutional position of Judges. To import those notions into the present context is not interpretation but transposition without authority.

17. Reliance for this principle may be drawn from the judgement of the Apex Court rendered in ***Union of India and Others v. Pratibha Bonnerjea and another, reported in AIR 1996 Supreme Court 693, paragraph-6*** of which is quoted below :

*"6. xxxxx We have already pointed out the provisions dealing with the appointment of High Court Judges. The entire procedure outlined for their appointment is totally different from that provided for other services. That is because the constitution makers were conscious that the notion of judicial independence must not be diluted. If the relationship between the Government and the High Court Judge is of master and servant it would run*

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*counter to the constitutional creed of independence for the obvious reason that the servant would have to carry out the directives of the master. Since a High Court Judge has to decide cases brought by or against the Government day in and day out, he would not be able to function without fear or favour if he has to carry out the instructions or directives of his master, the whole concept of judicial independence and separation of judiciary from the executive would crumble to the ground if such a relationship is conceded. High Court Judges would not be true to their oath if such a relationship is accepted. That is why not only Judges but even the staff members are insulated from executive influence. Article 229 clearly provides that appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer as he may direct. Even the conditions of service of officers and servants shall be such as may be prescribed by the chief Justice or his nominee authorised by him to make rules; the approval of the Government is necessary only if the rules relate to salaries, allowances, leave or pension. This provision also shows that officers and servants of the High Court are also under the exclusive control of the Chief Justice and not the Government. If that be the relationship between the officers and servants of the High Court vis-a-vis the Government, it is difficult to imagine a master and servant relationship between the Government and Judges of the High Court. **We have therefore, no hesitation** in coming to the conclusion that the relationship between the Government and Judges of the High Court. **We have therefore, no hesitation** in coming to the conclusion that the relationship between the Government and High Court Judges is not of master and servant. They cannot be said to be holding a post under the Union/State."*

18. It is not in dispute that the appointment, tenure, and service conditions of the Lokayukta are entirely governed by statute. Section 6(4) and (5) of the 2002 Act, as provided hereunder:

***“Section 6 - Term of office and other conditions of service of Lokayukta***

*(4) The salary, allowances payable to, and other conditions of service of Lokayukta shall be same as may be available from time to time to a sitting judge of the Supreme Court or Chief Justice or Judge of the High Court, as the case may be, in accordance with the office held by him :*

*Provided that the salary, allowances and other privileges available to the Lokayukta shall not be negotiable:*

*Provided further that the allowances payable and other conditions of service of the Lokayukta shall not be varied to his disadvantage after his appointment.*

*(5) The salaries and allowances payable to, or in respect of, the Lokayukta shall be the expenditure charged on the Consolidated Fund of the State.”*

This provision expressly provide that the salary and allowances of Lokayukta shall be the same as those available to a sitting Judge of the Supreme Court or the Chief Justice/Judge of a High Court, as the case may be. The statute further incorporates an express safeguard that such conditions shall not be varied to the disadvantage of the Lokayukta after appointment. Significantly, the Act does not contain any provision authorising deduction or adjustment of pension while fixing such salary. This legislative silence on pension deduction is not accidental. The legislature was fully aware that eligibility for the office of Lokayukta is confined to those who are or have been constitutional Judges, and therefore necessarily pensioners under the 1954 Act. The absence of any provision for adjustment can only mean one thing: that no such adjustment was intended or authorised.

19. The legislative intent is further evident from Section 4 of the Act of 2002, which prescribes that only a person who is or has been a Judge of the Supreme Court or the Chief Justice or Judge of a High Court is eligible for appointment as Lokayukta. The legislature was fully conscious that such appointees would be pensioners. Yet, no provision for deduction of pension has been incorporated under Section 6. The executive cannot, by interpretation or administrative action, introduce a condition which the legislature consciously omitted.

20. This court is sanguine of the fact that the pension payable to a retired High Court Judge is not a concession or bounty. It is a vested and indefeasible right accruing from past constitutional service, payable upon retirement. The law is



well settled that pension has no nexus with remuneration payable for a subsequent appointment, unless the governing statute specifically provides otherwise. In the absence of such statutory authority, pension cannot be curtailed, adjusted, or indirectly neutralised. Therefore, to permit deduction of pension in this situation would produce a result directly forbidden by Article 221(2) of the Constitution and Section 6 of the 2002 Act, that no variation be made to the disadvantage of a Judge, albeit after retirement, in respect of pension already earned.

21. This legal position stands authoritatively affirmed by the Division Bench of the Orissa High Court in *Justice Devendra Mohan Patnaik v. State of Orissa* (AIR 2008 Orissa 28), wherein it was categorically held that pension earned as a High Court Judge cannot be deducted from salary payable on a subsequent statutory appointment carrying the same pay and allowances as a High Court Judge. The Court emphasised that a High Court Judge does not hold a post under the Union or the State and that pension earned from such constitutional office cannot be abridged during subsequent employment unless the statute so mandates. Relevant paragraph of the same is as under:

*“11. Pension is not a bounty as has been held by the Supreme Court in several decisions. It is a part of one's own earning, which is retained and is given after superannuation as per the rules. Thus, an indefeasible right is created. That right cannot be taken away or abridged in any manner in course of a subsequent employment unless statute under which the employment is made specifically provides for such abridgement. In case of a statutory appointment like the one the petitioner was holding, namely, President of State Consumer Disputes Redressal Commission, which is made under the Consumer Protection Act, unless there exists a provision in the Act itself the indefeasible right to pension earned by a High Court Judge cannot be abridged in any manner particularly in the teeth of the constitutional provision of Article 221 (2) as interpreted by the Supreme Court in Sankalchand Himatlal Sheth's case (AIR 1977 Supreme Court 2328) (supra). No such provision having been pointed out to us in the Consumer Protection Act or the Rules made thereunder, the conclusion is irresistible that no part of the petitioner's pension*

*earned as a Judge of the High Court can be taken into account while fixing the salary for the period he served as whole time President of the State Commission under the Consumer Protection Act. Consequently the deduction of Rs. 12,724/- per month from his salary is illegal and would constitute a constitutional infraction.”*

22. The reliance placed by the respondents on constitutional provisions applicable to serving Judges, including the Second Schedule, is misplaced. Appointment as a Judge of the High Court is a constitutional appointment and not a service under the Government. Consequently, principles applicable to government servants or post-retirement re-employment under the State cannot be mechanically imported into a statutory office like that of the Lokayukta, particularly when the governing statute is silent on pension adjustment.

23. It is also relevant that the entitlement of petitioner no. 1 to pension as a retired High Court Judge stood affirmed by this Court, and the said view attained finality up to the Supreme Court. The impugned action of deducting pension from Lokayukta salary amounts to doing indirectly what is impermissible directly and results in varying the conditions of service to the disadvantage of the petitioners, in clear violation of Section 6(5) of the Act.

24. The plea of financial burden or “double benefit” is legally untenable. Once the statute mandates parity of salary with a sitting Judge and simultaneously does not authorise pension deduction, the Court cannot read such restriction into the law. Moreover, the record indicates that similarly situated persons have been extended the benefit of full salary without pension deduction, rendering the impugned action discriminatory and violative of Article 14 of the Constitution.

25. In sum, any statutory office that pegs its emoluments to the statutory code, must take it as it finds it. Pension earned from constitutional service remains inviolate, immune from adjustment or dilution, unless the Constitution or

Parliament expressly commands otherwise. To hold differently would be to erode, imperceptibly but surely, the constitutional architecture designed to secure the independence and dignity of the higher judiciary.

**Conclusion:**

26. In view of the above discussion, this Court finds that the impugned order dated 18.08.2022 (Annexure P-9) whereby the claim of the petitioners was declined, to be contrary to the statutory scheme of the Haryana Lokayukta Act, 2002, violative of settled constitutional principles governing pension, and unsustainable in law.

27. Accordingly, the writ petition is allowed and the impugned order dated 18.08.2022 (Annexure P-9) is set aside. The respondents are directed to release all consequential arrears. The petitioners shall also be entitled to interest at the rate of 6% per annum on the delayed payment, calculated from the date the amounts became due till actual disbursement. The aforesaid exercise shall be completed within a period of four weeks from the date of receipt of a certified copy of this order.

28. Petition stands allowed with above said observations.

29. Pending application(s), if any also stands disposed of.

**(SANDEEP MOUDGIL)**  
**JUDGE**

**09.01.2026**

*anuradha*

*Whether speaking/reasoned* : *Yes/No*  
*Whether reportable* : *Yes/No*