

Justice M. Vijayaraghavan vs Union Of India on 15 March, 2024

Author: Dhananjaya Y Chandrachud

Bench: Dhananjaya Y Chandrachud

2024 INSC 219

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 4272 of 2024
(Arising out of SLP (C) No 7246 of 2019)

Union of India, Ministry of Law & Justice

Versus

Justice (Retd) Raj Rahul Garg (Raj Rani Jain)
and Others

JUDGMENT

Dr Dhananjaya Y Chandrachud, CJI 1 Leave granted.

2 This appeal arises from a judgment dated 14 August 2018 of a Division Bench of the High Court of Punjab and Haryana.

3 The first respondent was appointed as a Judicial Magistrate in the State of Haryana on 11 May 1981. She was appointed as an Additional District Judge on 26 August 1997 and later, as a District Judge on 19 July 2010. In December 2013, she was recommended for appointment as a Judge of the High Court. Sometime before her appointment as a Judge of the High Court, she retired as a District Judge on 31 July 2014. On 25 September 2014, the first respondent assumed office as a Judge of the Punjab and Haryana High Court. She attained the age of superannuation and retired from service on 4 July 2016. 4 As a former Judge of the High Court, the first respondent instituted proceedings under Article 226 of the Constitution, aggrieved by the determination of her pensionary benefits.

She sought that notwithstanding the gap between her superannuation as a District judge and appointment as a Judge of the High Court, the entire period of service as from 11 May 1981 to 31 July 2014 as well as service rendered from 25 September 2014 to 04 July 2016, be reckoned for pensionary and other retirement benefits. The Union of India contested the petition on the ground that the gap ought to be considered as a break in service. 5 By its judgment dated 14 August 2018, the Division Bench of the High Court held that the entire period of service rendered by the first respondent from 25 September 2014 to 4 July 2016 as a Judge of the High Court shall be blended with the years of her service from 11 May 1981 till 31 July 2014 as a Judge of the district judiciary for the purpose of computing her pension as a Judge of the High Court. The Union of India is in appeal against the judgment of the High Court. Constitutional and Statutory Framework 6 Article 217 of the Constitution provides for the appointment and conditions of the office of a Judge of a High Court. Clause (2) of Article 217 stipulates that a person shall not be qualified for appointment as a Judge of a High Court unless such a person has:

(a) held a judicial office for a period of ten years in the territory of India;

and

(b) been an Advocate of a High Court or of two or more such Courts in succession for at least ten years.

7 Sub-clause (a) of clause (2) of Article 217 deals with persons who have held judicial office before appointment as a Judge of the High Court, while clause (b) essentially sets out conditions of eligibility for the appointment of Advocates to the Bench of the High Court.

8 Article 221 of the Constitution provides for salaries, allowances and pensions to be paid to the Judges of the High Courts. Clause 2 of Article 221 states that “(2) Every Judge shall be entitled to such al-

lowances and to such rights in respect of leave of absence and pension as may be from time to time be determined by or under law made by Parlia-

ment and, until so determined, to such allowances and rights as are specified in the Second Sched-

ule.” 9 The High Court Judges (Salaries and Conditions of Service) Act 1954 1 has been enacted by Parliament “to regulate salaries and certain conditions of service of the Judges of the High Court”. Section 2(1)(g) of the Act defines the expression ‘Judge’ to mean a Judge of a High Court and to include the Chief Justice, an acting Chief Justice, an Additional Judge and an acting Judge of the High Court. Chapter III of the statute deals with salaries and pensions. Section 14 stipulates that subject to the provisions of the Act, every Judge would, on retirement be paid a pension in accordance with the scale and provisions in Part I of the Schedule. The proviso, however, qualifies the entitlement to pension by stipulating that “no such pension shall be payable to a Judge unless”:

(a) he has completed not less than twelve years of service for pension;

or

(b) he has attained the age of superannuation; or 1 ‘The Act’

(c) his retirement is medically certified to be necessitated by ill health. 10 The proviso to Section 14 stipulates that if a Judge is in receipt of a pension at the time of their appointment in respect of any previous service in the Union or a State, other than a disability or wound pension, the pension payable under the Act shall be in lieu of and not in addition to that pension. The Explanation to Section 14, however, is in the following terms:

“Explanation.— In this section “Judge” means a Judge who has not held any other pensionable post under the Union or a State and includes a Judge who having held any other pensionable post under the Union or a State has elected to receive the pension payable under Part I of the First Schedule.”

11 In terms of the Explanation, an artificial meaning is ascribed to the expression ‘Judge’ for the purpose of Section 14. The meaning ascribed to the expression, for the purposes of Section 14, is a Judge who has not held any other pensionable post under the Union or a State and includes a Judge who, having held any other pensionable post under the Union or a State, elects to receive the pension payable under Part I of the First Schedule. At this stage, it would be, therefore, material to emphasize that while Section 2(1)(g) contains a broad and all-encompassing definition of the expression ‘Judge’, the same expression for the purposes of Section 14 has a more restricted meaning as described in the Explanation. 12 Section 15 contains a special provision for the payment of pension to Judges who are members of the service. Section 15 is in the following terms:

“15. Special provision for pension in respect of Judges who are members of service.—[(1)] Every Judge—

(a) * * * *

(b) who * * * has 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:

Provided that every such Judge shall elect to receive the pension payable to him either under Part I of the First Schedule or, * * * Part III of the First Schedule, and the pension payable to him shall be calculated accordingly.

[(2) Notwithstanding anything contained in sub- section (1), any Judge to whom that sub-section applies and who is in service on or after the 1 st day of October, 1974, may, if he has elected under the proviso to that sub-section to receive the pension payable to him under * * * Part III of the First Schedule before the date on which the High Court Judges (Conditions of Service) Amendment Act, 1976, receives the assent of the President, cancel such election and elect afresh to receive the pension payable

to him under Part I of the First Schedule and any such Judge who dies before the date of such assent shall be deemed to have elected afresh to be governed by the provisions of the said Part I if the provisions of that Part are more favourable in his case.]”

13 Clause (b) of sub-section (1) of Section 15 indicates that every Judge who has held any other pensionable post under the Union or a State would be paid a pension in terms of Part III of the First Schedule, subject to the condition (set out in the proviso) that the Judge elects to receive the pension payable either under Part I or, as the case may be, Part III of the First Schedule. Under Section 15(1)(b), upon electing for the payment of a pension under Part III of the First Schedule, the Judge would be entitled to pensionary benefits in the terms set out in Part III. Part III of the First Schedule is in the following terms:

“PART III

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.

2. 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.45,016] per annum in respect of each completed year of service for pension, * * * [Provided that the pension under clause (a) and the additional pension under (b) together shall in no case exceed [Rs. 15,00,000] per annum in the case of a Chief Justice and [Rs. 13,50,000] per annum in the case of any other Judge.]” Decision of the High Court

14 In the present case a communication dated 04 May 2016 addressed by the Under Secretary to the Government of India to the Deputy Accountant General (Pension) stated that since there was a break in the service of the first respondent, and the same could not be condoned and the period of her service as a Judge of the High Court could not be considered for calculating her pension.

15 The High Court noted that paragraph 2 of Part III was applicable to the first respondent. The High Court held that reading paragraph 2 harmoniously would entail a ‘blending of the period of both the services’; and that if the services were not so blended, the service of the first respondent as a Judge of the High Court would slip into oblivion. Hence, it was held that in accordance with the definition of ‘service’ in Section 2(1)(h) of the 1954 Act, the first respondent’s service as a Judge of the High Court was ‘actual service’: The High Court observed:

“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 July 2014 as ser- vice, for pension and accordingly, the pension will have to be calculated as judge of High Court”

16 The High Court directed that the service of the first respondent as a Judge of the High Court had to be blended with her services as a Judge of the District Judiciary and pension was to be calculated as for a Judge of the High Court. Submissions 17 The Union of India has adopted the position that:

(i) The computation of the retiral benefits has been done correctly, taking into account the thirty-three years of her service as a member of the District Judi-

ciary and the special additional pension. The High Court has erred in includ- ing her service as a Judge of the High Court, condoning the break in service of 54 days;

(ii) The first respondent had not completed twelve years of pensionable service as a Judge of the High Court within the meaning of Section 14;

(iii) There was a break in service between the date on which the first respondent retired as a District Judge (31 July 2014) and assumed the office of a Judge of the High Court (25 September 2014). This break could not be condoned un- der the 1954 Act by the High Court or by this Court;

(iv) The first respondent having opted to receive her pensionary payments under Part III of the First Schedule, the years of service which were rendered by her as a Judge of the High Court would be cumulated with her service as a mem - ber of the district judiciary;

(v) The pension payable to the first respondent would then be computed on the basis of last drawn salary as a District Judge; and

(vi) Since paragraph 2(b) of Part III of the First Schedule provides for a special ad-

ditional pension in respect of each completed year of service, the first re- spondent would be entitled to that as well.

18 The essence of the contest in these proceedings relates to the correctness of the interpretation which has been placed by the Union of India. 19 Mr Shailesh Madiyal, senior counsel appearing on behalf of the Union of India has adopted the above submissions. It has been urged that though the first respondent had not completed twelve years as a Judge of the High Court for the eligibility for pension in terms of Section 14, in view of the provisions of Section 15, she would be entitled to the computation of pension in terms of Part III of the First Schedule. Mr Madiyal urged that in terms of paragraph 2(a) of Part III, the total length of service rendered as a Judge of the High Court would have to be added to the length of service as a Judge of the district judiciary, to which a special additional pension would be added. Hence, it is urged that the Union was correct in computing the pensionary payment on the basis of the salary last drawn by the first respondent as a Judge of the

High Court.

20 Mr P S Patwalia, senior counsel appearing on behalf of the respondent, has, on the other hand, urged that the Division Bench of the High Court was justified in holding that the years of service as a member of the district judiciary would have to be blended with the years of service as a Judge of the High Court. Adverting to the provisions of Section 14A of the Act, which were introduced to provide an addition of ten years of service to a member of the Bar who is appointed as a Judge of the High Court, it was urged that it would be entirely discriminatory if a similar principle were not applied to the members of district judiciary appointed as a Judge of the High Court.

Analysis 21 Section 14(1) of the Act provides that the pension payable to a Judge shall be computed in accordance with Part I of the First Schedule. Among the three conditions prescribed for eligibility to receive pension, is the requirement of completing twelve years of service for pension. At the same time, the Explanation to Section 14 which was inserted by Act 13 of 2016, provides meaning to the expression 'Judge' for the purposes of Section 14. In its first part, the Explanation indicates that the expression means a Judge who has not held any other pensionable post either under the Union or a State. In the second part, the expression includes a Judge who has held a pensionable post under the Union or a State and has elected to receive pension under Part I of the First Schedule. The first part of the Explanation would encompass members of the Bar who would not have held any other pensionable post under the Union or a State. The latter part encompasses Judges falling within the description contained in Article 217(2)(a) of the Constitution, who have held a pensionable post under the Union or the State and who have opted to receive pension under Part I of the Schedule. The latter part thus covers only a person who has opted for pension under Part I of the First Schedule.

22 Section 15, on the other hand, is a special provision as its marginal note indicates, for Judges who are members of the service meaning the judicial service. Clause

(b) of Section 15(1) indicates that a person who has held a pensionable post under the Union or a State may elect to receive the pension payable either under Part I or Part III. In the case of a Judge, such as the first respondent, who elects to receive pension under Part III of the First Schedule, the pension payable has to be computed in terms of the provisions contained in paragraph 2 of Part III. . For the purpose of clause (a), the pension which is payable to the Judge is the pension to which they are entitled under the ordinary rules of service if they had not been appointed as a Judge and their service as a Judge is treated "as service therein for the purpose of calculating that pension". In other words, the service which is rendered as a Judge of the High Court has to be cumulated with the service rendered as a member of the district judiciary by treating it as service therein for computing the pension. To this, would be added a special additional pension in terms of clause (b) of paragraph 2.

23 As a result of Section 14A, a period of ten years is added and is deemed to have been added from 1 April 2004 for the purpose of pension to the service of a Judge who is appointed under clause (2)(b) of Article 217. Section 14A, is in other words, a special provision which was introduced for Judges of the High Court who have been appointed from the Bar. The introduction of Section 14A in 2016 was

preceded by three judgments of this Court. The first of them in *Kuldip Singh vs Union of India*,² dealt with the appointment of a Judge of the Supreme Court from the Bar. This Court held that a member of the Bar who was appointed as a Judge of the Supreme Court would be entitled to the addition of ten years of service for the purpose of computing pension. This principle was similarly applied in *Government of NCT of Delhi vs All India Young Lawyers Association (Registered)*³ in the case of the district judges. Eventually, the same principle was extended by this Court in *P Ramakrishnam Raju vs Union of India* ⁴ in dealing with the pension payable to High Court Judges who are appointed from the Bar under Article 217(2)(b) of the Constitution. A three-Judge Bench of this Court, speaking through Sathasivam, CJ noted that Judges who are appointed under Article 217(2)(a) being members of the judicial service obtain full pensionary benefits even if they serve as a Judge of the High Court for a bare period of a year or two because of their earlier entry into judicial service, but such a benefit is not extended to members of the Bar who become Judges of the High Court. This Court while laying down the principle of non-discrimination between High Court judges elevated from the bar on the one hand and from the district judiciary on the other, observed:

“19. When persons who occupied the constitutional office of Judge, High Court retire, there should not be any discrimination with regard to the fixation of their pension. Irrespective of the source from where the Judges are drawn, they must be paid the same pension just as they have been paid same salaries and allowances and perks as serving Judges. Only 2(2002) 9 SCC 218 3(2009) 14 SCC 49 4(2014) 12 SCC 1 practising advocates who have attained eminence are invited to accept Judgeship of the High Court. Because of the status of the office of High Court Judge, the responsibilities and duties attached to the office, hardly any advocate of distinction declines the offer. Though it may be a great financial sacrifice to a successful lawyer to accept Judgeship, it is the desire to serve the society and the high prestige attached to the office and the respect the office commands that propel a successful lawyer to accept Judgeship. The experience and knowledge gained by a successful lawyer at the Bar can never be considered to be less important from any point of view vis- à-vis the experience gained by a judicial officer. If the service of a judicial officer is counted for fixation of pension, there is no valid reason as to why the experience at Bar cannot be treated as equivalent for the same purpose.

20. The fixation of higher pension to the Judges drawn from the subordinate judiciary who have served for shorter period in contradistinction to Judges drawn from the Bar who have served for longer period with less pension is highly discriminatory and breach of Article 14 of the Constitution. The classification itself is unreasonable without any legally acceptable nexus with the object sought to be achieved.” (emphasis supplied)

24 The principles which have been laid down by the three-Judge Bench decision in *P Ramakrishnam Raju* (supra) provide guidance to this Court in resolving the controversy in the present case.

25 Pensionary payments to Judges constitute a vital element in the independence of the judiciary. As a consequence of long years of judicial office, 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.

26 The contention of the Union of India is that the first respondent did not fulfill the requirement of twelve years of service and was, therefore, not entitled to the benefit of Section 14. This submission clearly misses the plain consequence of the Explanation to Section 14. The Explanation is exhaustive in terms of the categories of Judges to which it applies since it uses both the expression ‘means’ and ‘includes’. In other words, Section 14 applies to a Judge who has not held any pensionable post either in the Union or the State or a person who having held a pensionable post has opted to receive pension under Part I of the Schedule. A Judge such as the first respondent who has not opted to receive the benefits of pension under Part I of the First Schedule would fall outside the purview of the Explanation and, hence Section 14 would have no application. 27 The post-retiral pension to such a Judge would, therefore, be governed by Section 15 read with paragraph 2 of Part III of the Act. Upon electing to receive pension under Part III of the First Schedule, the first respondent was entitled to have the years of service which were rendered by her as a Judge of the High Court cumulated with the years of service rendered as a member of the district judiciary. This is in accordance with clause (a) which stipulates that the pension payable to a Judge shall be first, the pension they would be entitled to under the ordinary rules of ‘service’ if they had not been appointed as a Judge of the High Court, that is if they continued their service as a District Judge; second, their service as a Judge of the High Court would be treated as service therein for the purpose of calculating their pension. Paragraph 2 (a) or any other provision of the Act does not indicate that a break in service such as the one in the service of the first respondent would make paragraph 2 inapplicable and disentitle such a Judge from adding their service as a High Court Judge to their service as a District Judge for the purpose of calculating their pension. The Union of India has failed to establish such a disentitlement. Further, the break in service was attributable to the time taken in processing the recommendation made in her favor. In any case, it was not attributable to anything that the first respondent had done, and it could not be used to prejudice her by rendering her service as a Judge of the High Court inconsequential to the calculation of pension.

28 The Union has sought to urge that the pension was correctly calculated on the basis of the last drawn salary as a District Judge. To accept this position would be contrary to established precedent and would result in a clear discrimination between a member of the Bar who becomes a Judge of the High Court and a member of the district judiciary who is appointed as a Judge of the High Court. 29 In *M L Jain vs Union of India*, 5 this Court was deciding upon the validity of a letter issued by Ministry of Law and Justice which stated that the pension under para 2(a) of Schedule I of the 1954 Act would be in accordance with the pay that they drew in the parent department, preceding their

elevation to the High Court. Quashing the said letter as contrary to the para 2(a) of Schedule I of the Act, a three-judge bench of this Court, speaking through Justice O Chinnappa Reddy, observed as follows:

“We are of the opinion that para 2(ii) of the letter dated September 19, 1984 is a clear departure from para 2 clause (a) of Schedule I to the High Courts Judges (Conditions of Service) Act. Under clause (a) of para 2 of the Schedule I to the High Courts Judges' (Conditions of Service) Act the retiring Judge's entire service as a Judge has to be reckoned for the purpose of calculating his pension and for that purpose the last pay drawn by him has to be the pay drawn by him as a Judge of the High Court and not the pay that would have been drawn by him as a District Judge, had he not been appointed a High Court Judge.” 5 1985 2 SCC 355, 357

30 Acceptance of the submission of the Union of India would discriminate against Judges of the High Court based on the source from which they are drawn. A member of the Bar is entitled to the addition of ten years of service by virtue of the provisions of Section 14A. On the addition of the years of service, their pensionary benefits would be computed on the basis of the last drawn salary as a Judge of the High Court. However, if the argument of the Union of India is accepted, the pension of a Judge who was a former District Judge would be computed on the basis of their salary as a District Judge. A similar principle, as applicable to Judges appointed from the Bar, must be applied for computing the pension of a member of the district judiciary who is appointed to the High Court. Any other interpretation would result in a plain discrimination between the Judges of the High Court based on the source from which they have been drawn. Such an interpretation would do disservice to the importance of the district judiciary in contributing to the judiciary of the nation, and would be contrary to the overall scheme and intendment of Chapter III of the statute. It would go against the anti-discriminatory principles stipulated by this Court in so far as Judges drawn from various sources are concerned.

Conclusion 31 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.

33 The appeal is accordingly disposed of.

34 Pending applications, if any, stand disposed of.

.....CJI.

[Dr Dhananjaya Y Chandrachud]J. [J B Pardiwala]
.....J. [Manoj Misra] New Delhi;

March 15, 2024 CKB