

## M.L. Jain vs Union Of India on 18 August, 1988

Equivalent citations: 1989 AIR 669, 1988 SCR SUPL. (2) 496

**Author: A.P. Sen**

**Bench: A.P. Sen**

PETITIONER:

M.L. JAIN

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 18/08/1988

BENCH:

SEN, A.P. (J)

BENCH:

SEN, A.P. (J)

NATRAJAN, S. (J)

CITATION:

1989 AIR 669                      1988 SCR Supl. (2) 496

1988 SCC (4) 121              JT 1988 (3) 499

1988 SCALE (2) 370

CITATOR INFO :

D                      1991 SC 928 (2)

ACT:

High Court Judges (Conditions of Service) Act, 1954/High Court Judges (Conditions of Service) Rules, 1956: Section 15 and Para 2 of Part III of First Schedule/Rule 2-Retired High Court Judges- Recalculation and redetermination of pension-Improvement of service conditions including pension by virtue of Amendment Act 38186 and 20/88-Constitutional propriety and legality of Ministry of Law & Justice letter dated December 18, 1987 giving liberty to State Government to determine the pension.

HEADNOTE:

The petitioner, before his appointment as a Judge of the Rajasthan High Court, was a member of the Rajasthan Higher Judicial Service. He was later transferred and appointed as a Judge of the High Court of Delhi. He retired on July 21, 1984. The petitioner had opted for the purpose of his

pension, for Part 111 of the First Schedule to the High Court Judges Conditions of Service) Act, 1954. Under this provision, the petitioner was entitled to a basic pension as admissible under the ordinary rules of his Service if he had not been appointed a Judge, and an additional pension for each completed year of service as a Judge of the High Court.

The High Court Judges (Conditions of Service) Amendment Act, 1986 and 1988 brought about improvements in the service conditions. including pension, of the High Court Judges. The Government of India subsequently issued a scheme for rationalisation of pension structure for pre-January 1, 1984 pensioners. Pursuant there to the Ministry of Law & Justice, Government of India, issued letter dated December 18, 1987 giving directions to the Accountants General/Pay and Accounts Officers as to the manner in which the basic pension of the High Court Judges governed by the provisions of Part 111 of the First Schedule to the High Court Judges Conditions of Service Act, 1954 may be revised with effect from 1.1.1986, as in the case of the employees of Central Government, or from some other date the respective State Government may decide to adopt these orders or an independent order issued by them.

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The petitioner has claimed higher pension on the ground that service Judges with lesser service, who belonged to Higher Judicial Service of some other States? have been granted higher pension while he has been subjected to a discriminatory treatment in the matter.

Allowing the Civil Miscellaneous Petition, it was,

HELD: (1) This Court fails to appreciate the propriety of the letter dated December 111, 1987 of the Ministry of Law & Justice giving liberty to different State Governments to deny the benefit of the revised pension to the Service Judges consequently upon the enactment of the High Court Judges (Conditions of Service) Amendments Acts. 1986 and 1988 read along with Office Memoranda issued by the Government of Pension & Pensioners Welfare, dated April 14 1987, and April 16, 1987 and rule 2 of the High Court Judges Rules, 1956. Such a direction is constitutionally impermissible as offending Art.14 of the Constitution. It is tantamount to denial of equal treatment to persons belonging to the same class without any rational basis. [503F-H; 504A ]

(2) While the salary of Judges of the High Court is charged on the Consolidated Fund of the States, the pension of High Court Judges is charged on the Consolidated Fund of India. [500E]

JUDGMENT:

ORIGINAL JURISDICTION: Civil Miscellaneous Petition No. 18044 of 1980.

IN Writ Petition No. 16093 of 1984.

(Under Article 32 of the Constitution of India ). Tapash Ray. Ms. Pratibha Jain and S. K. Jain for the Petitioner-.

K. Parasaran, Solicitor General, Kuldip Singh. Additional Solicitor General and Ms. A. Subhashini for the Respondent.

The following Order of the Court was delivered:

**O R D E R** This is an application by Shri M.L. Jain, retired Judge of the Delhi Court questioning the constitutional propriety and legality of the order issued by the Pay & Accounts PG NO 498 Officer, Delhi Administrative (High Court & Miscellaneous), New Delhi dated July 12) 1938 purporting to fix his pension at Rs.26,000 per annum and for an appropriate direction for re-determination of his pension and other pensionary benefits in view of the change in law brought about by High Court Judges (Conditions of Service) Amendment Acts, 1996 and 1988 (Act Nos. 38 of 1986 and 20 Of 1986). This order must be read in continuation of the earlier order delivered by this Court in M. L. Jain & Anr; v. Union of India, [1973- 5] 2 SCC 355 by which this Court made a direction for payment of pension to the petitioner at Rs.21,5000 per annum in view of the two ceilings then operating against him, viz

(a) a ceiling under the Rajasthan Rules providing that the maximum amount of pension should not exceed Rs. 1,500 per annum and (b) that under cl. (b) of Paragraph 2 of Part 111 of the First Schedule of the High Court Judges (Conditions of Service) Act, 1954.

According to the petitioner, in view of the change in law, the amount of pension payable to him has to be re- calculated and re-determined at Rs.41,600 per annum w.e.f. January, 1. 1986 which amount has to be further increased to Rs.46,100 per annum w.e.f. November 1, 1986 in place of the pension of Rs. 21,500 as earlier directed. The question that falls for determination in this order is whether consequent upon the improvement of the service conditions including pension and other benefits by the High Court Judges (Conditions of Service) Amendment Acts, 1986 and 1988 and pursuant to the office Memoranda issued by the Government of India, Ministry of Personal, Public Grievances & Pensions, Department of Pensions & Pensioners welfare dated April 14, 1987 and April 16, 1987 the pension of the petitioner Shri M.L. Jain has to be re-calculated and re-determined at Rs. 41,600 per annum w.e.f. January 1, 1986 which amount has to be further increased to Rs. 46,100 per annum w.e.f. November 1, 1986 in place of the pension of Rs. 21,500 as earlier directed. In view of the importance of the question involved, we requested Sri K Parasaran, learned Attorney General to assist the Court. We are greatly beholden to the learned Attorney General for the assistance that he has rendered.

The facts are uncontroverted. The petitioner has had a long and distinguished career in judicial service extending over a period of 38 years and 9 months. including 9 years and 21 days as a Judge of the High Court. When the PG NO 499 petitioner was appointed as a Judge of the High Court of Rajasthan on July 1, 1975, he was a member of the Rajasthan Higher Judicial Service having been a District & Sessions Judge for the period from November 9, 1970 to July 1, 1975. On his appointment as a Judge of the Rajasthan High Court, the petitioner opted, for the purpose of his pension, for Part III of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954. On July 23, 1978 the petitioner was transferred as a Judge of the High Court of Delhi under Art. 222 (1) of the Constitution. On July 24, 1978 the petitioner was sworn in as a Judge of the Delhi High Court and continued to hold that office till the date of his retirement on July 21, 1984."

In order to appreciate the point in its true perspective, it is necessary to set out the relevant constitutional and other statutory provisions as well as the changes brought about by the High Court Judges (Conditions of Service) Amendment Acts, 1986 and 1988, as also the Office Memoranda issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare dated April 14, 1987 and April 16, 1987 for upward revision of pension and rationalisation of the same.

Art. 221 of the Constitution enacts:

"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 advantage after his appointment. "

Under cl. (i) every Judge of a Nigh Court is thus entitled to such salaries as may be determined by Parliament PG NO 500 by law. By cl. (2) such a 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. Until such a law is made, every such Judge shall be entitled to such salaries, allowances and rights as are specified in the Second Schedule.

The relevant provision relating to the petitioner Shri M.L. Jain is the one contained in s. 15 (1) (b) of the High Court Judges (Conditions of Service) Act, 1954 which is a law made by Parliament regulating his right to pension and it reads:

"15. Every Judge

(a) \*\*\*\*\*

(b) who is not a member of the Indian Civil Service but has held any other pensionable civil 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";

It is unquestionable that while the salary of Judges of the High Court charged on the Consolidated Fund of the State, the pension of such High Court Judges is charged on the Consolidated Fund of India.

Paragraph 2 of Part III of the First Schedule as amended by Act 35 of 1976, which was in force on July 1, 1975 when the petitioner was first appointed as a Judge of the Rajasthan High Court, was in these terms:

"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. 700 per annum in respect of each completed year of service for pension but in no case such additional pension together with the additional or special pension, if any, to which he is entitled under the ordinary rules of his service; shall exceed Rs.3,500 per annum."

PG NO 501 By Act 36 of 1986 in cl. (b) of Paragraph 7 of Part III of the First Schedule of the Act, the special additional pension of Rs.700 has been raised to Rs. 1,600 and the ceiling of Rs.3,500 to Rs. 8,000 respectively w.e.f. November 1, 1986. There is however a proviso beneath cl. (b) which reads:

"Provided that the pension under clause (a) and the additional pension under clause (b) together shall in no case exceed Rs. 54,000 per annum in the case of a Chief Justice and Rs. 48,000 per annum in the case of any other Judge."

Rule 2 of the High Court Judges Rules, 1956 as amended till March 18,1987 which governs all Service Judges, provides:

"2. Conditions of service in certain cases- The Conditions of service of a Judge of a High Court for which no express provision has been made in the High Court Judges (Conditions of Service) Act, 1954 shall be, and shall from the commencement of the Constitution be deemed to have been, determined by the rules for the time being applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated:

Provided that, in the case of a Judge of the High Court of Delhi, the condition of service shall be determined by the rules for the time being applicable to a member of the Indian Administrative service on deputation to the Government of India and holding the rank of Joint Secretary to the Government of India stationed at New Delhi."

It would be convenient at this stage to refer to the decisions taken by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare. On March 18, 1987 the Government of India by Resolution No. 2/13/87-PIC accepted the recommendations of the Fourth Central Pay Commission for upward revision of pension and pensionary benefits. It was applicable to all pensioners family pensioners who were drawing pension family pension under the C.C.S. (Pension) Rules, 1972. C.C.S. (Extraordinary Pension) Rules and the corresponding rules applicable to Railway Pensioners and pensioners of All India Service.

PG NO 502 In pursuance of the aforesaid Resolution, the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare issued an Office Memorandum No. 2/1-87-PIC-II dated April 14, 1987 bringing about modifications in the rules regulating Pension, Death-cum-Retirement Gratuity and Family Pension under the C.C.S. (Pension) Rules, 1972, Rule 3.1 of the Rules as modified made the revised provisions applicable to Government servants who retired or died in harness on or after January 1, 1986. Rule 5.2 provided that pension shall be calculated at 50% of average emoluments in all cases instead of under the slab formula given in cl. (a) of sub-r. (2) of r. 49 of the Pension Rules.

By a subsequent Office Memorandum dated April 16, 1987 the Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners Welfare issued a scheme for rationalisation of pension structure for pre-January 1, 1986 pensioners. It applied to all pensioners belonging to the classes enumerated above, including officers of the Indian Civil Service who retired from service on or after January 1 1973. Paragraph 2.2. of the Office Memorandum provides that separate orders would be issued by the Ministry of Defence in regard to Armed Forces Pensioners/Family Pensioners. Paragraph 2.3 is a provision with regard to retired Judges of the Supreme Court and the High Courts and it provides:

"These orders do not also apply to retired High Court and Supreme Court Judges and other constitutional/statutory authorities whose pension etc. is governed by separate orders. Necessary orders in their case will be issued by the respective administrative authorities."

Paragraph 5 of the aforesaid Office Memorandum provides for payment of additional benefit equal to the difference between half of the emoluments and the basic pension in view of re-calculation of pension at 50% of average monthly emoluments in place of the slab system. It further provides that there would be no upper ceiling on the amount of pension now so worked out.

On December 18, 1987 the Government of India, Ministry of Law & Justice, Department of Justice purported to issue a letter addressed to (1) Accountants General, All States, (2) The Pay & Accounts Officer, Supreme Court of India, New Delhi and (3) The Pay & Accounts Officer No. XIV, Delhi Administration, New Delhi giving direction as to the manner in which the basic pension of the Supreme Court Judges and PG NO 503 High Court Judges governed by the provisions of Part III of the First Schedule to the High Court/Supreme Court Judges (Conditions of Service) Act, 1954/1958 is to be determined, the relevant portion whereof reads :

"The ordinary pension admissible to High Court/Supreme Court Judges under para 2(a) of Part-III of the First Schedule/Schedule to the High Court/Supreme Court Judges (Conditions of Service) Act, 1954/1958, respectively, may be revised with effect from 1. 1. 1986 as in the case of the employees of Central Government or from some other date, the respectively State Governments may decide to adopt these orders or an independent order issued by them, if any to grant the benefit of increased pension on similar lines to their employees including members of Higher Judicial Service."

The said letter goes on to say:

"This is subject to the condition that the total pension including additional pension admissible to such Judges under para 2(a) and (b) of Part-III of the First Schedule/Schedule to the High Court/Supreme Court Judges (C/S) Act, 1954/1958 shall not exceed Rs.48,000 p.a. Rs.54,000 p.a. and Rs. 60,000 p.a. in the case of Judge, High Court, Chief Justice, High Court/Judge, Supreme Court of India and the Chief Justice of India, respectively."

We fail to appreciate the propriety of the aforesaid letter of the Ministry of Law & Justice giving liberty to the different State Governments to deny the benefit of the revised pension to the Service Judges consequent upon the enactment of Act 38/86 and 20/88 read along with the aforesaid Office Memoranda issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare dated April 14, 1987 and April 16, 1987 and r. 2 of the High Court Judges Rules, 1956. Virtually this means that the State Governments may or may not issue any orders in of Paragraph 2.3 of the Office Memorandum dated April 16, 1987 appointing a date for grant of revised pension, or appoint different dates for the grant of revised pension to the retired High Court Judges who had opted to be governed by Part III of the First Schedule of the Act. Such a direction, in our view, was constitutionally impermissible as offending Act. 14 of the Constitution. It is tantamount to denial of equal treatment PG NO 504 to persons belonging to the same class without any national basis.

It was urged on behalf of the petitioner that the Pay & Accounts Officer should not have denied the petitioner the benefit of the higher pension he was entitled to in the light of the changed provisions of law and that paragraph 2.3 of the Memorandum had no relevance to the petitioner's case because the petitioner, by reason of his transfer from the Rajasthan High Court to the Delhi High Court under Act. 222 of the Constitution became automatically a judge of the Delhi High Court and

therefore he was governed by the first proviso to r. 2 of the High Court Judges (Conditions of Service) Rules, 1955 which provides that in the case of a Judge of the High Court of Delhi and a Judge of the High Court of Punjab & Haryana, the conditions of service shall be determined by the Rules for the time being applicable to a Member of Indian Administrative Service on deputation to the Government of India holding the rank of Joint Secretary to the Government of India stationed at New Delhi. It was urged by reason of this position the petitioner was entitled to the benefits of pension in restructured scale set out in the Memorandum. It was further stated that likewise the action of the Pay & Accounts Officer in reckoning the basic pension of the petitioner at Rs. 1,500 per month as provided in column 1 to the Table appended to the Memorandum, and not at Rs.2,925 merely on the strength of the earlier position noticed in M. L. Jain 's case, despite the changes brought about by Act 38 of 1986, and Act 20 of 1988 and in depriving him of the benefit of additional relief of Rs.250 per month w.e.f. January 1, 1986 was wholly misconceived and unwarranted. We not only found the contentions of the petitioner to have force but also to be irrefutable ones. To bring out more forcefully how the governmental action is patently arbitrary and as to how he had been subjected to discriminatory treatment without there being any justifiable basis for it the petitioner brought to our notice the higher rates of pension the Pay & Accounts Officer had fixed for some other Judges of the Delhi High Court even though their overall period of service and their tenure of office as a Judge of the High Court was lesser than his. While the Pay & Accounts Officer has fixed the pension of the petitioner at Rs. 26,000 per annum, the very same authority had fixed the pension of Shri J.D. Jain at Rs.46,340 and that of Shri D.R. Khanna at Rs.44,684 per annum who had also retired as Judges of the Delhi High Court. They had put lesser periods of total-service as well as service as High Court Judges. Shri J.D. Jain had put in judicial service for a period of 35 PG NO 505 years, 7 months and 19 days including 6 years 5 months and 2 days as a Judge of the Delhi High Court. Shri D.R. Khanna had a total period of judicial service of 34 years, 110 months and 25 days including 5 years, 11 months and 28 days as a Judge of that High Court. We must confess that it surpasses our comprehension as to on what rational basis the Pay & Accounts Officer deemed it just and proper to accord differential treatment to the petitioner and fixing his pension at the low figure of Rs.26,000 when other Judges of the same High Court who had put in lesser number of years of service were held entitled to pension at much higher rates.

The State Government of Uttar Pradesh by its notification no. 14/1/39/84 CX (1) dated May 31, 1988 has brought about a change in cl. (b) of Paragraph 2 of Part III of the First Schedule and revised the rates of pension w.e.f. January 1, 1986 in terms of the aforesaid Memorandum. Accordingly, a Judge of the Allahabad High Court Shri J.P. Chaturvedi who, retired on February 7, 1981 had his pension fixed at Rs.46, 100 per annum. We are given to understand that he had put in much shorter period of service as compared to the petitioner. We commend the action of the State Government of Uttar Pradesh in issuing a Notification as abovesaid to clarify the position and to ensure the implementation of the change brought about in cl.(b) of Paragraph 1 of Part III of the First Schedule and would direct all the State Governments to issue orders in similar terms.

The learned Attorney General with his usual fairness frankly conceded that there is patent disparity in the pension fixed for the petitioner at Rs.26,000, Shri Kuldeep Singh, learned Additional Solicitor General appearing on behalf of the Union of India assured us that the disparity disparity would be removed as expeditiously as possible and the authorities would endeavour to pay th difference to the



petitioner without delay. The learned Attorney General was kind enough to say that he would advise the Government to bring about parity between the pension drawn by the petitioner and the other Judges in India. We refrain from expressing any opinion as to the effect of lifting of the ceiling on that special additional pension Rs. 8,000 per annum placed by cl.(b) of paragraph 2 of Part III the First Schedule. The question really does not arise for our consideration at the moment and is left open. In the result, C.M.P. No. 18044/88 is allowed. The impugned order of the Pay & Accounts Officer dated July 12, 1988 is quashed. We direct the Union of India as well as the Pay PG NO 506 & Accounts Officer, Delhi Administration (High Court & Miscellaneous), New Delhi to re-fix the pension of the petitioner at Rs.41,600 per annum w.e.f. January 1, 1986 and at Rs.46,100 per annum w.e.f. November 1, 1986. We further direct that the arrears of the difference in the amount of pension be paid to the petitioner as expeditiously as possible and in any event, not later than two months from today. The petitioner shall also be entitled to all other consequential benefits.

R.S.S.

Petition allowed.