Union Of India vs Justice S.S. Sandhawalia on 11 January, 1994

Equivalent citations: 1994 AIR 1377, 1994 SCR (1) 83, AIR 1994 SUPREME COURT 1377, 1994 (2) SCC 240, 1994 AIR SCW 786, 1994 (2) ALL CJ 733, (1994) 1 SCR 83 (SC), (1994) IJR 111 (SC), 1994 (1) BLJR 307, 1994 (1) SCR 83, 1994 ALL CJ 2 733, (1994) 1 JT 62 (SC), 1994 (1) UPLBEC 192, 1994 (1) UJ (SC) 387, (1994) 2 MAD LJ 32, (1994) 1 UPLBEC 192, (1994) 26 ATC 922, (1994) 2 SCT 239, (1994) 68 FACLR 595, (1994) 2 LABLJ 509, (1994) 1 LAB LN 866, 1994 SCC (L&S) 530, (1994) 2 PAT LJR 48, (1994) 1 SERVLR 343

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Bench: A.M. Ahmadi, K. Ramaswamy

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
JUSTICE S.S. SANDHAWALIA

DATE OF JUDGMENT11/01/1994

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
RAMASWAMY, K.

CITATION:
1994 AIR 1377 1994 SCR (1) 83
1994 SCC (2) 240 JT 1994 (1) 62
1994 SCALE (1)69

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by AHMADI, J.- These are two cross appeals arising out of the judgment rendered by a Division Bench of the High Court of Punjab and Haryana on January 12, 1990 in Civil Writ Petition No. 4838 of 1988 lodged by Shri Justice S.S. Sandhawalia, retired Chief Justice of the said High Court and later of the High Court of Patna (Bihar). For the sake of convenience we will hereafter refer to him as the 'original petitioner'. The facts giving rise to these two appeals, the first by the Union Government and the second by the original petitioner, briefly stated, are as under.

2.The original petitioner retired as the Chief Justice of the High Court of Patna on July 27, 1987. His retiral benefits were released to him but his grievance survived in respect of the following:

(i) the full amount of gratuity due to him was not released;

(ii)while computing the cash equivalent of leave due to him at the date of his retirement, the cash equivalent of the various allowances drawn by him just before his retirement had not been included;

(iii)he was not paid the amount payable to him under Section 22-B of the High Court Judges (Conditions of Service) Act, 1954; and

(iv)his claim for reimbursement of medical charges had not been cleared.

The High Court notices that during the pendency of the writ petition in the High Court, the authorities had substantially satisfied his grievances at (i) and (iv) except for some marginal matters which the High Court has dealt with towards the end of its judgment. The grievances stated at (ii) and (iii) above were, however, contested by the authorities as inadmissible. The precise case put forth by the original petitioner in regard to his grievance set out at (ii) and (iii) above was that in computing the cash equivalent of leave due to him at the date of his retirement the authorities were bound to include the (i) sumptuary allowance of Rs 500 per month (ii) compensatory allowance of Rs 900 per month admissible under Article 222(2) of the Constitution of India, (iii) the city compensatory allowance of Rs 75 per month and (iv) the cash equivalent of the perquisites admissible under Sections 22-A and 22-B of the High Court Judges (Conditions of Service) Act, 1954, hereinafter called 'the 1954 Act'. It may be advantageous to reproduce the relevant sections at this stage:

"22-A. (1) Every Judge shall be entitled without payment of rent to the use of an official residence in accordance with such rules as may, from time to time, be made in this behalf.

(2)Where a Judge does not avail himself of the use of an official residence, he may be paid every month an allowance of two thousand five hundred rupees.

22-B. Every Judge shall be entitled to a staff car and one hundred and fifty litres of petrol per month/every month or the actual consumption of petrol whichever is less;

22-C. The Chief Justice and each of the other Judges of every High Court shall be entitled to a sumptuary allowance of five hundred rupees per month and three hundred rupees per month respectively."

The authorities, however, contend that leave encashment is governed by Rule 20-B of the All India Services (Leave) Rules, 1955, hereafter alluded to as 'the 1955 Rules', read with Rule 2 of the High Court Judges Rules, 1956, hereafter referred to as 'the 1956 Rules', and as such except dearness allowance no other allowance is includible in computing the said benefit of leave salary. We may, therefore, reproduce the said provisions at this stage to correctly appreciate the stand of the authorities. Rule 20-B of the 1955 Rules reads thus:

> "20-B. Payment of cash equivalent of leave salary to a member of the service retiring from service on attaining the age of superannuation.- (1) The Government shall suo motu sanction to a member of the Service who retires from the Service under sub-rule (1) of Rule 16 of the All India Services (Death-cum- Retirement Benefits) Rules, 1958, the cash equivalent of leave salary in respect of the period of earned leave at his credit on the date of his retirement, subject to a maximum of 240 days:
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> Provided that a member of the Service who attained the age of superannuation before the 30th September 1977 and was on extension of service on or after that date shall be entitled to the cash equivalent of leave salary, on his retirement from service, in respect of the earned leave that was refused to him in public interest and was carried forward to the period of extension plus earned leave due to him during the period of extension reduced by the amount of earned leave availed of during such period, subject to a maximum of 240 days.
>
> 20-B. (2) The cash equivalent of leave salary payable to a member of the Service under sub- rule (1) above shall also include dearness allowance admissible to him on the leave salary at the rates in force on the date of retirement, and it shall be paid in one lump sum, as a onetime settlement.
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> 20-B. (3) The city compensatory allowance and the house rent allowance shall not be included in calculating the cash equivalent of leave salary under this rule.
>
> 20-B. (4) 20-B. (5) Rule 2 of the 1956 Rules next provides as follows:
>
> "2. Conditions of service in certain cases.-

The 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 (and a Judge of the Punjab & Haryana ...) the conditions 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."

The grievance of the original petitioner as set out in (iii) above is that although he was entitled under Section 22-B extracted earlier to the facility of a staff car and one hundred and fifty litres of petrol every month or actual monthly consumption of petrol, whichever was less, he was not provided this facility by the State of Bihar during his tenure there as Chief Justice and hence he was entitled to cash equivalent of the conveyance facility denied to him minus the value of 150 litres of petrol which he availed of by the use of another vehicle. He estimated this claim of Rs 3500 per month on the premise that the neighbouring State of West Bengal was paying at the rate of Rs 3500 per month to its Judges in lieu of the conveyance facility which it was obligated to provide under Section 22-B of the 1954 Act. It may here be mentioned that while the State of Bihar failed to file a counter to contest this claim, the Union Government categorically stated that it had not concurred with the arrangement worked out by the State of West Bengal of paying a fixed amount in lieu of providing a staff car as required by the aforesaid provision. The Union of India has, therefore, questioned the claim of the original petitioner under this head.

3.The High Court came to the conclusion that all allowances except City Compensatory Allowance and House Rent Allowance were includible in calculating the cash equivalent of leave salary payable to a Judge of the High Court under Rule 20-B of the 1955 Rules read with Rule 2 of the 1956 Rules. The two allowances, namely, the City Compensatory Allowance and the House Rent Allowance were inadmissible and had to be excluded in terms of sub-rule (3) of Rule 20-B which specifically provides for their exclusion. The High Court, therefore, held that (i) sumptuary allowance of Rs 500 per month, (ii) compensatory allowance of Rs 900 per month admissible under Article 222(2) and (iii) conveyance charges at the rate of Rs 3500 per month were includible in computing the cash equivalent of leave due to the original petitioner at the date of his retirement. The High Court also accepted the claim of the original petitioner for the failure of the State of Bihar in providing a staff car to him as admissible under Section 22B of the 1954 Act at the same rate of Rs 3500 per month. The marginal claims under

(i) and (iv) were finalised by the High Court by ordering grant of interest at 12% per annum on the balance gratuity amount of Rs 51,000 which was paid in July 1988 i.e. approximately one year after his retirement.

So also the High Court allowed him interest on the difference payable to him on his claims under (ii) and (iii) having been partly allowed. So far as his claim under (iv) is concerned, the State of Punjab, which discharged the liability in respect of medical reimbursement of the original petitioner as a special case, contended that since the latter had settled in Panchkula outside the State of Punjab, though in the vicinity of Chandigarh, it was not liable to reimburse him and would not be bound to

do so in future. The High Court repelled this contention. It is not necessary to set out the reasons which weighed with the High Court in repelling the contention of the State of Punjab because the State has not appealed against the said finding of the High Court. As both the Union of India and the original petitioner were dissatisfied with the view taken by the High Court in regard to claims under (ii) and (iii) above, they have preferred these appeals to the extent the High Court has allowed the claim against the former and disallowed a part of the claim of the latter.

4.From the foregoing discussion it becomes clear that the Union of India contested the writ petition in the High Court only in regard to the entitlement of the cash equivalent of the allowances including the benefit conferred by Section 22-B of the 1954 Act and the cash benefit claimed for failure of the State of Bihar to provide the original petitioner with a staff car. The Union Government had conceded the demand for the grant of rupees one lakh by way of death-cum-retirement gratuity and had paid the balance of Rs 51,000 to the original petitioner. Since this payment was delayed by a year or so, the original petitioner claimed interest on the balance amount at 12% per annum, which has been rightly allowed by the High Court. Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year. We uphold this part of the High Court's order.

5.The original petitioner has rightly pointed out that although the points raised in the present proceedings may at first blush appear to be personal to him, his petition wherein these issues were raised was really representative in character as the Court's decision thereon would apply to all the Judges of the High Court and even to Judges of the Apex Court. The questions at issue have acquired considerable significance after 1986 when the service conditions of Judges belonging to the superior judiciary underwent substantial changes. The contention of the original petitioner, therefore, is that the Court should clarify this position so that the benefit of this Court's pronouncement may be available to all the Judges of the High Court. We will bear this in mind while passing the final orders.

6.The salary and allowances payable to a High Court Judge are ascertained by Article 221 of the Constitution which is in two parts. Clause (1) thereof posits that Judges of each High Court shall be paid such salaries as may be determined by Parliament by law and, until so determined, such salaries as are specified in the Second Schedule. Clause (2) which is relevant for our purpose reads as under:

> "221. (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:
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> 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."

Part 'D' of the Second Schedule makes provision as to the salaries and allowances payable to the Judges of the High Court. The entitlement of every High Court Judge is to the specified salary and to allowances, which, inter alia, include 'leave of absence' and 'pension'. The rights in respect of leave of absence and pension to which a Judge of a High Court is entitled are to be determined by or under law made by Parliament and, until so determined, as are specified in the Second Schedule to the Constitution. Accordingly, Parliament enacted the 1954 Act, Chapter 11 whereof comprising Sections 3 to 13 enumerates the kinds of leave admissible to a Judge. These are (a) leave on full allowances (b) leave on half allowances, and (c) leave partly on full allowances and partly on half allowances. Section 4 requires keeping of a leave account showing the amount of leave due to a Judge in terms of leave on half allowances. It further provides that there shall be credited to the leave account of a Judge (i) one-fourth of the time spent by him on actual service, (ii) a period equal to double the period by which the vacation enjoyed by him in any year falls short of one month if he has been detained for work during vacation, and (iii) the period of leave earned by him in any pensionable post held by him earlier under the Union or the State, so, however, as not to exceed 240 days in terms of leave on full allowance. Section 5 indicates the aggregate amount of leave which may be granted while Section 5-A provides for commutation of leave on half allowances into leave on full allowances. Sections 6 to 8 deal with grant of leave not due, special disability leave and extraordinary leave. Section 9 as it stood before its amendment by Act 32 of 1989, provided that the monthly rate of leave allowances payable to a Judge while on leave on full allowances shall be for the first 45 days of such leave a rate equal to the monthly rate of his salary and thereafter Rs 2220. The monthly rate of leave allowance payable to a Judge while on half allowances shall be Rs 1110 only. Section 10 provides for allowances for joining time, Section 11 permits combining of leave with vacation, Section 12 sets out the consequences for overstaying leave or vacation and Section 13 specifies the authority competent to grant leave. Chapter III of the said statute deals with pensions. Section 14 provides that every judge on his retirement shall be paid pension which shall not exceed Rs 54,000 per annum in the case of a Chief Justice and Rs 48,000 in the case of a Judge of the High Court. Section 17 deals with extraordinary pension, Section 17-A with family pension, Section 19 with commutation of pension, Section 20 with provident fund, Section 20-A with deposit- linked insurance scheme and Section 21 prescribes the authority competent to grant pension. Chapter IV deals with miscellaneous matters which include Sections 22-A, 22-B and 22-C extracted earlier. Section 23 provides for medical treatment facilities and Section 24 empowers the Central Government to make rules inter alia relating to leave of absence of a Judge, pension, use of official residence, medical facilities, etc. In pursuance of the said power the Central Government made the 1956 Rules by which certain additional benefits, e.g., free (furnished) official residential accommodation, free water and electricity benefits, etc. were conferred. Rule 2 which we have extracted earlier, provides that the condition of service of a Judge of the High Court, where not expressly provided for in the 1954 Act, must be determined by the rules governing a member of the IAS of the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated but in the case of a Judge of the High Court of Delhi and Punjab & Haryana by the rules applicable to a member of the IAS on deputation to the Central Government holding the rank of a Joint Secretary to the Government of India stationed at New Delhi. Rule 2-A indicates the rights of a Judge availing of an official residence, Rule 2-B sets out the value of free furnishing to which he would be entitled in the official residence and Rule 2-E relates to the extent of reimbursement allowed on account of the use of water and electricity. Reference may also be made to the All India

Services (House Rent Allowances) Rules, 1977, hereinafter referred to as 'the 1977 (HRA) Rules'. Under Rule 3 of these rules a member of an All India Service, serving in connection with the affairs of the Union, is entitled to draw HRA at the rates governing officers of the Central Civil Services Group A. However, if such member of the service is serving in connection with the affairs of a State, he is entitled to draw HRA at such rates as are admissible to officers of the State Services, Class 1, so, however, that the same shall not be less than the rates applicable to a member of the Service, serving in connection with the affairs of the Union. These, in brief, are the legal provisions to which our attention was invited by the learned counsel for the original petitioner.

7.We may now notice the decision of this Court in the case of Union of India v. Gurnam Singh' on which both sides placed considerable reliance. The respondent in that case was elevated to the Bench of the High Court of Punjab & Haryana on February 24, 1972 and retired on March 18, 1980. He had earned leave to his credit which he had not utilised before his retirement. He claimed cash equivalent for the unutilised earned leave which claim was spurned. Thereupon, he moved the High Court under Article 226 of the Constitution. The High Court allowed his writ petition by the order of September 5, 1980 on the ground that he was entitled to cash equivalent for the leave he had not availed of under Rule 20 of the 1955 Rules by virtue of Rule 2 of the 1956 Rules. This order was assailed by the Union of India by 1 (1982) 2 SCC 314 : 1982 SCC (L&S) 236: AIR 1982 SC 1265 special leave. This Court, after noticing the relevant provisions of the Constitution, the 1954 Act, the 1955 and 1956 Rules and reading Rule 20-B of the 1955 Rules with Rule 2 of the 1956 Rules, concluded as under: (SCC pp. 317-18, para 7) "It is not disputed that Rule 20-B applies to a member of the Indian Administrative Service of the rank of Joint Secretary to the Government of India stationed at New Delhi. The rule entitles him on retirement from service to the cash equivalent of leave salary in respect of the period of unutilised earned leave subject to a maximum of 180 days, inclusive of dearness allowance. It is apparent that by virtue of Rule 2 of the High Court Judges Rules, 1956 this benefit must be read as a condition of service enjoyed by a Judge of the High Court. It may be observed that although Rule 20-B of the All India Services (Leave) Rules, 1955 is a provision of a scheme applicable to members of the All India Services, there is nothing in its nature and content which makes it inapplicable mutatis mutandis to the statutory scheme pertaining to leave enacted in the High Court Judges (Conditions of Service) Act, 1954.

There is also nothing in the constitutional position of a Judge of a High Court which precludes Rule 20-B from inclusion in that scheme. It is true that Rule 20-B revolves around the concept of earned leave, and the expression I earned leave' has been specifically defined by clause (b) of Rule 2 of the All India Services (Leave) Rules, 1955 as 'leave earned under Rule 10'. But Rule 10 merely lays down the rate and amount of earned leave. The principle in which 'earned leave' is rooted must be discovered from Rule 4 which provides that 'except as otherwise provided in these rules leave shall be earned by duty only'. The performance of duty is the basis of earning leave. That concept is also embedded in the High Court Judges (Conditions of Service) Act, 1954. Under that Act, the time spent by a judge on duty constitutes the primary ingredient in the concept of 1 actual service' [clause (c), sub-section (1) of Section 2], which is the reason for crediting leave in the leave account of a Judge [Section

41. Although the expression 'earned leave' is not employed in the Act, the fundamental premise for the grant of leave to a Judge is that he has earned it. He has earned it by virtue of the time spent by him on actual service. That a Judge earns the leave which is credited to his leave account is borne out by the proviso to Section 6 of the Act, which declares that the grant under Section 6 of leave not due will not be made 'if the Judge is not expected to return to duty at the end of such leave and earn the leave granted'.

The concept then on which Rule 20-B proceeds is familiar to and underlies the statutory scheme relating to leave formulated in the Act. It bears a logical and reasonable relationship to the essential content of that scheme. On that, it must be regarded as a provision absorbed by Rule 2 of the High Court Judges Rules, 1956 into the statutory structure defining the conditions of service of a Judge of a High Court. We may observe that even as a right to receive pension, although accruing on retirement, is a condition of service, so also the right to the payment of the cash equivalent of leave salary for the period of unutilised leave accruing on the date of retirement must be considered as a condition of service."

(emphasis in original) It is obvious from the above observations that this Court extended the benefit of leave encashment granted to a member of the IAS of the rank of Joint Secretary under Rule 20-B of the 1955 Rules to a High Court Judge as well by virtue of Rule 2 of the 1956 Rules. This was on the premise that even though the expression 'earned leave' employed in Rule 20-B was not used by the 1954 Act and the 1956 Rules, the principle on which that concept was rooted could be discovered as embedded in the concept of 'actual service' in Section 2(1)(c) read with Section 4 of the 1954 Act. It was, therefore, held that the concept on which Rule 20-B was founded was familiar to the 1954 Act. On this line of reasoning the benefit recognised by Rule 20-B of the 1955 Rules was extended to High Court Judges.

8. Under the judgment impugned in these appeals, the High Court, placing emphasis on the proviso to Article 221(2) of the Constitution, held that since the original petitioner had served as a Judge/Chief Justice of the High Court of Punjab & Haryana for over 15 years before his transfer as Chief Justice of the High Court of Patna, he had earned the right to full pension and other ancillary benefits which could not be denied to him merely on account of his fortuitous transfer to Patna. Therefore, notwithstanding the fact of his transfer and subsequent retirement from Patna, he was, by virtue of the proviso to Article 221(2), entitled to all the allowances and benefits derived by him immediately before his transfer if they were more beneficial. It, therefore, took the view that certain rights had vested in him by virtue of the proviso to clause (2) of that article which could not be altered to his 'disadvantage' by the process of transfer. In support of this view reliance was placed on the decision rendered by the Allahabad High Court in B. Malik v. Union of India2. On this line of reasoning the objection to territorial jurisdiction raised by the State of Bihar was brushed aside. As regards the original petitioner's claim that in computing the cash equivalent of earned leave, the value of all allowances, namely, (i) sumptuary allowance of Rs 500 per month, (ii) compensatory allowance under Article 222(2) of Rs 900 per month, (iii) city compensatory allowance of Rs 75 per month, (iv) value of rent free and furnished house under Section 22-A of the 1954 Act, and (v) value of conveyance facility under Section 22-B of the 1954 Act, should be added, the High Court ordered that all allowances except city compensatory allowance and house rent allowance payable to a

Judge/Chief Justice at the time of his retirement had to be added in calculating the cash equivalent of leave salary payable under Rule 20-B of the 1955 Rules read with Rule 2 of the 1956 Rules. The city compensatory allowance and house rent allowance having been specifically excluded by sub-rule (3) of Rule 20-B were held to be inadmissible. In calculating the monetary benefit of the conveyance allowance, the High Court went by the payment made to Judges 2 AIR 1970 All 268 of the Calcutta High Court and awarded Rs 3500 minus the cost of 150 litres of petrol per month. The original petitioner is, however, aggrieved that the High Court ruled that the city compensatory allowance and house rent allowance were to be excluded in calculating the leave salary admissible to a Judge on retirement, inasmuch as sub- rule (3) of Rule 20-B of the 1955 Rules applied mutatis mutandis only and not literally and in any case the said sub-rule had no application in view of Section 3 of the 1954 Act as also because the statutory right to the use of official residence under Section 22-A of the 1954 Act was wholly different in content from house rent allowance drawn by a member of the service under the 1977 (HRA) Rules. On the other hand the Union of India contends that in view of this Court's decision in Gumam Singh case' the High Court ought not to have held the other allowances as includible in calculating the cash value of leave salary.

9. It is clear, on a plain reading of Section 4 read with the definition of ,actual service' in Section 2(c) of the 1954 Act, that the leave to be credited in the leave account of a Judge has relation to the 'actual service' put in by him and, therefore, the concept of 'earned leave' is very much embedded therein. This was made clear in no uncertain terms by this Court in Gumam Singh case'. Although the original petitioner retired as Chief Justice of the High Court of Patna, both sides seem to have proceeded on the basis that Rule 20-B of the 1955 Rules applicable to a Joint Secretary to the Government of India, was attracted to the original petitioner's case and no dispute was raised in that behalf before us. This is presumably because the rule applicable to a Secretary to the Government of Bihar is not beneficial. We must, therefore, proceed on the basis that the said rule is beneficial to the original petitioner. Now Rule 20-B which was introduced with effect from February 22, 1979 and was modified with effect from April 19, 1980, enjoins upon the Government to suo motu sanction the cash equivalent of leave salary at the credit of a member of the service on the date of his retirement. Sub-rule (2) thereof makes it clear that the cash equivalent of leave salary shall also include dearness allowance admissible to him. Since there is no dispute in this behalf, we need not elaborate. Sub-rule (3) then provides in no uncertain terms that city compensatory allowance and house rent allowance shall not be included in calculating the cash equivalent of leave salary under this rule. The kinds of leave admissible under the 1955 Rules are similar to those admissible under the 1954 Act, subject of course to variations in details, save and except study leave and maternity leave to which there is no reference in the latter Act. It is, therefore, clear that in the absence of an express provision in the 1954 Act, the question of cash equivalent of leave salary must be determined by the rules governing a member of the Indian Administrative Service, in this case, of the rank of a Joint Secretary to the Government of India stationed at New Delhi. This is clearly the ratio of Gumam Singh case' with which we respectfully agree.

10.The learned counsel for the original petitioner however contended that the question under consideration must be viewed in the historical backdrop which led to the introduction of the provision for grant of cash equivalent for leave salary. According to him the accumulation of earned leave and availing thereof at times when the pressure of work was heavy, in particular preparatory to

retirement, caused grave administrative difficulties and more often than not leave had to be refused in public interest necessitating the payment of cash equivalent for leave refused. In order to avoid administrative disturbances it was increasingly felt that the exercise of refusing leave in public interest and paying cash equivalent to the employee had almost become a routine necessity and hence it would be desirable that the practice should be formalised into a rule with a view to discouraging requests for grant of earned leave at a time when the presence of senior officers is essential and encouraging accumulation of earned leave during service to secure monetary benefits on retirement. Accordingly, urged counsel, the rule for grant of cash equivalent came to be introduced. We would proceed to examine the claim of the original petitioner assuming this to be the historical background for the introduction of the rule for grant of cash equivalent of leave salary. But as pointed out earlier there is no express provision in this behalf in the 1954 Act. Section 3(1) indicates the kinds of leave admissible to a Judge and Section 4 provides for keeping of a leave account for each Judge. Section 9 sets out the monthly rate of leave allowances payable to a Chief Justice or a Judge at a certain percentage of his salary. Counsel submits that the underlying concept and purpose of the rule providing for grant of cash equivalent being that the retiring official gets the exact financial equivalent of salary and allowances, the expression ,salary' must be understood in the wider sense of salary and allowances. Since High Court Judges are entitled to a variety of allowances, e.g., rent free furnished official residence, sumptuary allowance, allowance under Article 222(2) of the Constitution, staff car and 150 litres of petrol, etc.,these allowances ought to be held includible in the computation of cash equivalent for otherwise the real intent and purpose of the scheme would be defeated. We have given our most anxious consideration to the submissions very ably and emphatically presented by the learned counsel for the original petitioner but we are afraid we cannot persuade ourselves to accept the same.

11. Rule 2(d) of the 1955 Rules defines 'earned leave' to mean leave earned under Rule 10. Rule 10 inter alia provides for crediting the leave account of a member of the service by 30 days earned leave in a calendar year. Provision is also made therein for carrying forward the unutilised earned leave subject to a maximum of 240 days. Rule 20 provides for grant of leave salary equivalent to the pay drawn immediately before a member of the service proceeds on earned leave. The expression 'leave salary' is defined by Rule 2(1) to mean the monthly amount admissible to a member of the service who has been granted leave under the rules. Then comes Rule 20-B which entitles a member of the service to cash equivalent to leave salary in respect of unutilised earned leave subject to a maximum of 240 days on retirement. By virtue of Rule 2 of the 1956 Rules this benefit is extended as a condition of service to a Judge of the High Court on superannuation. That is because as held by this Court in Gurnam Singh case' there is nothing in its nature and content which makes it inapplicable mutatis mutandis to the statutory scheme pertaining to leave since the concept of earned leave is found embedded in the 1954 Act. It, therefore, follows that the leave credited to the account of a Judge under Section 4 of the 1954 Act is conceptually I earned leave' even though that expression is not used in the said statute. It then follows that the entitlement to cash equivalent of leave salary by a retired High Court Judge must be determined on the basis that Rule 20-B of the 1955 Rules is made applicable by virtue of Rule 2 of the 1956 Rules. Rule 20-B which we have reproduced earlier in no uncertain terms provides that while the cash equivalent of leave salary shall include dearness allowance it shall not include (i) city compensatory allowance and

(ii) house rent allowance. Now, it is well known that city compensatory allowance is granted at certain stations on account of expensiveness of those stations to compensate that element of expensiveness which was not covered by the uniformly applicable dearness allowance formula. Once a government servant retires he is not obliged to reside in that station and, therefore, there can be no question of including the benefit of this allowance in calculating the cash equivalent of earned leave. The rule, therefore, specifically provides that the said allowance shall be excluded in calculating the cash equivalent of earned leave. On the same principle it must be excluded in calculating the cash equivalent admissible to a retired Judge. The High Court was, therefore, entirely right in excluding the same.

12.We have already pointed out that the 1954 Act does not carry any provision for the grant of cash equivalent for unutilised accumulated earned leave and hence the claim in that behalf must be rested on Rule 20-B of the 1955 Rules read with Rule 2 of the 1956 Rules. That 'is why earlier the claim was not entertained till the position was clarified by this Court in Gurnam Singh case'. It will be apparent from the observations made in that case, which we have extracted in extenso in the earlier part of this judgment, that the provision of Rule 20-B was made applicable to Judges of the High Court mutatis mutandis to the scheme pertaining to leave enacted in the 1954 Act. Therefore, the benefit can be claimed under the terms of Rule 20-B of the 1955 Rules and not dehors the said rule. If that is so, Rule 20-B specifically provides that DA will be includible in computation of cash equivalent of leave salary but not (i) city compensatory allowance and (ii) house rent allowance. That is the reason why the High Court rightly held that these two allowances which are expressly excluded cannot be included in working out the cash equivalent of leave salary. We have already upheld the High Court's opinion in regard to the city compensatory allowance. However, in regard to HRA, counsel for the original petitioner tried to draw a distinction and we will deal with it at the appropriate stage.

13.It is clear from Rule 20-B that it expressly states which allowances are includible and which are not in calculating the cash equivalent for unutilised earned leave. Except DA no other allowance is includible under the said rule. Our attention has not been invited to any other provision under which other allowances can be treated as includible. Since the High Court Judges can also claim benefit of grant of cash equivalent of unutilised earned leave under the said rule only, as clarified in Gumam Singh case' with which we respectfully agree, the claim for inclusion of other allowances cannot be supported on the language-of that rule.

14.Rule 20-B(3) of the 1955 Rules also posits that HRA will not be included in calculating the cash equivalent of leave salary admissible under the said rules. A member of the service serving in connection with the affairs of the Union or the State is entitled to draw HRA under such rates and subject to such conditions as may be specified by the Government concerned, vide Rule 3 of the 1977 (HRA) Rules. Now one of the three basic requirements for a human being living in civilised society is shelter, that is, a place of residence for himself and his family members. Every human being spends a part of his earnings on acquiring a reasonably decent living place depending on his status in life and so does a government employee. It is generally assumed that a government servant can bear a certain burden for acquiring a place of abode for himself and his family, say 10% or thereabouts of his salary, but if the burden that he is required to bear is heavier than what was

assumed when the pay structure was constructed, he has to be compensated for the extra burden falling on him by grant of HRA. This, briefly put, is the logic on which the system of grant of HRA appears to have been introduced. Under the 1955 Rules, therefore, HRA is not includible for computing cash equivalent of leave salary. Sub-rule (6) of Rule 20-B which provides the formula for working out the cash equivalent leaves no room for doubt that only pay plus DA has to be taken into account and no other allowance. To leave nothing to doubt it is specifically provided that city compensatory allowance and HRA shall not be included. This much is clear on a plain reading of Rule 20-B as also 20-C of the 1955 Rules.

15.It may at this stage be mentioned that even under the 1954 Act, Section 9, the monthly rate of leave allowances payable to a judge is a given percentage of the monthly rate of his salary and does not speak of inclusion of allowances. Article 221 clearly draws a distinction between salary and allowances and when Section 9 speaks of salary the intention seems to omit allowances. But in the case of High Court Judges by the introduction of Section 22-A in the 1954 Act with effect from October 1, 1974" provision was made for the grant of rent free official residence in accordance with rules made from time to time. Sub-section (2) of that section provides that if a Judge does not avail himself of the use of an official residence, he may be paid every month an allowance of Rs 2500. This allowance clearly partakes the character of house rent allowance. Rule 2-A of the 1956 Rules says that a Judge who avails of the use of an official residence, shall be entitled without payment of rent to the use of a furnished residence throughout his term in office and for a period of one month thereafter, and no charge shall fall on the Judge personally in respect of the maintenance of the residence. Under Rule 2-C if a Judge overstays in the official residence he becomes liable to pay rent and other charges in respect of the period of overstay calculated in accordance with the rules applicable to members of IAS holding the rank of Secretary to the Government of the State or Union Territory in which the High Court is situated. It is crystal clear from the above provisions that the benefit of rent free accommodation or allowance in lieu thereof is coterminous with the tenure of office of the Judge plus one month thereafter and no more. It is, therefore, obvious that instead of giving the Judge HRA, he is granted the benefit of rent free furnished official residence or a monthly allowance of Rs 2500 if he does not avail of it. These provisions are clearly to provide residential accommodation to a Judge who holds a high constitutional office instead of granting HRA. If in the case of a member of the service HRA is not includible for computing cash equivalent of leave salary, it would be so in the case of the Judge also since neither the 1954 Act nor the 1956 Rules provide for its inclusion. Here again the High Court seems to be right in its conclusion.

16. The learned counsel for the original petitioner however submitted that the historical perspective which necessitated the making of a provision for grant of cash equivalent for leave salary shows that the idea was to give him the same benefits to which he was entitled prior to his retirement and that is why a Judge is allowed to enjoy the benefit of rent free furnished residence even after his retirement for one month. The mere fact that the Judge is allowed this facility is no indication that the intention was to extend the benefit of all allowances converted into cash. The facility of use of residence for one month after retirement is merely to facilitate vacating of official residence and setting up of a home elsewhere. We, therefore, see no substance in this contention.

17.Sumptuary allowance is allowed to meet the expenditure required to be met for entertaining official visitors, etc., and there can be no question of incurring such expenditure after retirement. Similarly allowance is granted under Article 222(2) of the Constitution on account of the extra expenditure a transferred Chief Justice or Judge has to incur on transfer. There would be no question of getting these benefits directly or indirectly after retirement. And where it was intended to extend the benefit to post- retirement period also it was specifically provided for as in the case of residential accommodation. So also the provision for grant of conveyance facility, staff car and petrol, cannot be extended for the period post-retirement as the said facility is provided to a Judge while in office. Where the legislative intention was to continue the facility with or without modification to the postretirement period a specific provision is made as in the case of occupation of official residence for one month after retirement or the extent of medical facility to be provided, see Section 23-D of the 1954 Act. The High Court has not given any cogent and convincing reason for taking the view that all other allowances except city compensatory allowance and HRA are includible in calculating the cash equivalent of leave salary of a Judge. We, therefore, find it difficult to uphold the High Court's view.

18.That brings us to the last question regarding the grant of compensation to the original petitioner for the Government's failure to provide him with a staff car as required by Section 22-B of the 1954 Act. That section reads as under:

> "Every Judge shall be entitled to a staff car and one hundred and fifty litres of petrol per month/every month or the actual consumption of petrol whichever is less."

On a plain reading of this provision it is clear beyond any manner of doubt that a Judge is entitled to (i) a staff car and (ii) 150 litres of petrol per month or actual consumption, whichever is less, While the original petitioner was not provided with a staff car he was admittedly allowed the use of his entitlement of petrol in another vehicle for which the Government has made the payment. Under this provision having regard to the high office which a Judge enjoys it is considered proper and commensurate with his status that he be provided with a staff car for use by himself and his family members land' a maximum of 150 litres of petrol. This is not to say that his entitlement of petrol cannot be availed of independently of the staff car. The original petitioner was, therefore, entitled to use his entitlement of petrol on another vehicle. The words used in the section are staff car "and" one hundred and fifty litres of petrol and not staff car "with" one hundred and fifty litres of petrol. Unless the words are so interpreted it would lead to the absurd situation that a defaulting Government may not provide a staff car and may then deny the benefit of petrol entitlement on the ground that without the staff car he cannot be given the petrol. In such a situation the Judge would be denied even the petrol entitlement by denying him the staff car. Also take a situation where during vacation a Judge proceeds to his home town where he cannot take his staff car because of long distance. Is he to be denied his petrol entitlement merely because he has not brought his staff car along with him? If two views are reasonably possible we would lean in favour of the view which would be favourable to the subject i.e. the Judge concerned. We are, therefore, in agreement with the view of the High Court that the failure on the part of the Government to provide the original petitioner with a staff car as mandated by Section 22-B of the 1954 Act was clearly an act in breach of the express provision of the service condition enshrined in the statute for which the original

petitioner was entitled to be compensated. The measure of compensation has been determined on the basis of what the neighbouring State paid to its Judges who were not provided with a car and we see no reason to doubt the correctness of the High Court's approach in this behalf. We uphold this part of the impugned order.

19.Before parting we must clarify that we should not be understood to be approving the action of the State of Bihar as well as the State of West Bengal in not providing staff cars to the Judges of their High Courts and making monthly payments in lieu thereof as that has the effect of destroying uniformity in the matter of service conditions of High Court Judges. Provision was made by introduction of Sections 22-A and 22-B to bring about uniformity in service conditions of High Court Judges all over the country and no State Government could be permitted to act in violation thereof. In fact the Government of India was duty bound to ensure compliance with the said provisions. Temporary arrangements till receipt of a car may be inevitable but the obligation could not be shelved by monthly payments determined by the State Government. That would virtually amount to replacing the statutory provision by executive inaction. We cannot approve of the same.

20.In the result the appeal of the original petitioner, Civil Appeal No. 3060 of 1991 is dismissed but with no order as to costs. The appeal of the Union of India, Civil Appeal No. 3059 of 1991 is allowed and the judgment of the High Court is reversed to the extent it holds that all allowances except city compensatory allowance and house rent allowance are includible in calculating the cash equivalent of leave salary due to the original petitioner for the unutilised leave not exceeding 240 days. We set aside that finding and hold that the said allowances, viz., (i) sumptuary allowance, (ii) allowance under Article 222(2), (iii) allowances under Sections 22-A, 22-B and 22-C of the 1954 Act are not includible in computing the cash equivalent of leave salary due to a Chief Justice or Judge of the High Court. The amount deposited in this Court calculated after including the money equivalent of the aforesaid allowances and withdrawn pursuant to this Court's order dated August 1, 1991, shall be refunded by the original petitioner within three months from today failing which the Government shall be at liberty to recover the same with interest at 15% per annum on the expiry of the said period. We reject the Government's plea for grant of interest from the date of withdrawal till refund. There will be no order as to costs throughout as this is a litigation of a representative character. We may, however, clarify that since we have approved the High Court's order in regard to payment of compensation for failure to supply staff car in terms of Section 22-B; the original petitioner will be entitled to retain the amount received under that head . The appeal will stand disposed of accordingly.