

Union Of India (Uoi) vs V.B. Raju on 29 March, 1982

Equivalent citations: AIR1982SC1174, [1982(45)FLR328], 1982LABLC1487, 1982(1)SCALE238, (1982)2SCC326, 1982(1)SLJ602(SC), 1982(14)UJ312(SC), AIR 1982 SUPREME COURT 1174, 1982 LAB. I. C. 1487, (1982) 45 FACLR 328, 45 FACLR 328, 1982 UJ (SC) 312, 1982 (2) SCC 326, (1982) 1 SERVLJ 602, 1982 SCC (L&S) 247, (1982) 2 LAB LN 640

Bench: O. Chinnappa Reddy, R.B. Misra

JUDGMENT

1. The respondent Shri V.B. Raju, was a member of the Indian Civil Service and was a Judge first of the Bombay High Court and later of the Gujarat High Court. He was a judge from June 12, 1959 to February 10, 1969 on which date he retired. He filed a Writ Petition in the Gujarat High Court claiming that he was entitled to be paid a pension of £ 1000 Sterling in addition to the additional pension payable under Part II of the 1st Schedule to the High Court Judges (Conditions of Service) Act, 1954. Following an earlier judgment of the same Court in J.D. Kapadia v. Union of India (1971) 12 GLR 938 the Gujarat High Court allowed the Writ Petition and declared that the amount payable under Clause 2(a) of Part II of the first schedule of the High Court Judges (conditions of service) Act 1954, was £ 1000 Sterling according to the official rate of exchange prevailing on the date when payment became due instead of the fixed sum of Rs. 13,333.33 ps. per annum. The Union of India has filed this appeal against the decision of the Gujarat High Court. The earlier judgment of the Gujarat High Court in J.D. Kapadia v. Union of India (1971) 12 GLR 938 was reversed by this Court in V.B. Raju v. State of Gujarat In view of the judgment of this Court in V.B. Raju v. State of Gujarat this appeal has to be allowed. It was however, argued by Shri V.B. Raju, in the case now before us, that in the earlier judgment of the Supreme Court there was no reference to the High Court Judges (Conditions of Service) Act 1954. According to Shri Raju Section 15 of the Act provided that every judge who was a member of the Indian Civil Service shall, on his retirement, be paid a pension in accordance with the scale and the provisions in Part II of the 1st schedule. Part II of the 1st schedule provided that the pension which a judge who was a Member of the Indian Civil Service was entitled to receive was the pension to which he was entitled under the ordinary rules of the Indian Civil Service if he had not been appointed a judge and the additional pension in accordance with the prescribed scale. Shri Raju would say that under the ordinary rules of the Indian Civil Service he was entitled to a pension of £ 1000 sterling and not Rs. 13,333.33 ps. Under Regulation 561 of the Civil Service Regulations as it stood before 12.6.56 a member of the Indian Civil Service was entitled to receive a pension of £ 1000 Sterling. Regulation 561 was amended on 12.6.56 and instead of an annuity off 1000 Sterling an annuity of Rs. 13,333.33 ps. was substituted. Shri Raju argued that Regulation 561 as it stood before it was amended in 1956 was incorporated by reference in the High Court Judges (Conditions of Service) Act 1954, and therefore, he was entitled to be paid £ 1000 and not Rs. 13,333.33. We see no force whatever in the submission. There is no such incorporation, by reference, of Regulation 561 in Part II of the 1st schedule as it stood before the amendment in the High Court Judges (Conditions of Service) Act 1954. All that part II stipulates is that the pension

which a High Court Judge who was a member of the Indian Civil Service was entitled to receive was the pension payable under the ordinary rules of the Indian Civil Service if he had not been appointed a judge. If he had not been appointed a judge he would have been entitled to a pension of Rs. 13,333.33 and not £ 1000 Sterling. That is, therefore, what he is entitled to get, of course, in addition to the additional pension.

2. Shri Raju raised a preliminary objection that in view of Article 312A(3) of the Constitution which came into force w.e.f. 29.8.72 the present appeal by the Union of India was not maintainable. We see no force in the submission. The action out of which the appeal arises was instituted prior to 29.8.72 and the Union of India had a vested right of appeal vide *GARIKAPATTI VEERAYA v. N. SUBBIAH CHOUDHARY*. 1957 SCR 488 The appeal is therefore allowed, and the Writ Petition in the High Court is dismissed.

3. There will be no order as to costs.