V. B. Raju vs Union Of India & Others on 4 September, 1980

Equivalent citations: 1980 AIR 1671, 1981 SCR (1) 599

Author: A.D. Koshal

Bench: A.D. Koshal, Y.V. Chandrachud, Syed Murtaza Fazalali

PETITIONER:
V. B. RAJU

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT04/09/1980

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
CHANDRACHUD, Y.V. ((CJ)
FAZALALI, SYED MURTAZA

CITATION:
1980 AIR 1671 1981 SCR (1) 599

ACT:
High Court Judges (Conditions of Service) Act, 1954 , second proviso to section 14 and clause (a) of section 15 read with Part II of First Schedule, validity of-Whether an I.C.S. Officer drawn to the judicial side, continued in service under section 10(2) of the Independence Act, 1947 and Article 314 of the Constitution and later on appointed as a High Court Judge entitled to double pension, one for the service as an I.C.S. Officer and the other for the service as a High Court Judge.

HEADNOTE:
Dismissing the appeal by certificate, the Court
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HELD: (1) The trichotomy originating with the Government of India (High Court Judges) Order, 1937, continued under section 10(2) of the Independence Act, 1947 and finally adopted by the High Court Judges (Conditions of Service) Act, 1954 does not suffer from any legal or constitutional infirmity and, on the other hand, has the

sanction of the Constitution itself. [612 F]

(2) The trichotomy is good not only because it was adopted by the Constitution till legislation was enacted under Article 221(2) thereof, but also because it was necessitated by reason of High Court Judges being drawn from three different sources, namely, Indian Civil Service, State Judicial Services and directly from the Bar. All the High Court Judges though holding equivalent posts are thus not similarly situated, particularly in regard to the payment of pension and other retirement benefits. The classification so made is a reasonable classification based on intelligible differentia having a proper nexus to the object to be achieved and there is thus no question of any violation of Articles 14, 221 and 314 of the Constitution. [610 H-611 A, C; 612F]

(3) It is a cardinal principle of interpretation of statutes that the legislature does not use meaningless language and that every word used by it must be presumed to have some meaning even though the phraseology employed may sometimes be obscure or ambiguous. [608 F]

The expression "who is a member of the Indian Civil Service" appearing in clause (a) of section 15 of the 1954 Act cannot be just ignored as being inapplicable to an existing situation and thus rendered otiose. What was meant was to describe as a class High Court Judges who had earlier been members of the Indian Civil Service so that they could be distinguished from High Court Judges who had not been such members. Although the Indian Civil Service ceased to function as a Service of the Secretary of State for India after the 15th of August 1947 when the 1947 Act was enforced, its members were automatically appointed to corresponding posts under the Crown in connection with the affairs of the Dominion of India or of a Province by virtue of the provisions of sub-clause (1) of clause 7 of the India (Provisional Constitution) Order,

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1947. The Indian Civil Service was not abolished in so many words and on the other hand, its members were given the right to continue in service on and after the 15th August, 1947 under the same conditions of service as were applicable to them immediately before that date as made out by sub-sections (1) and (2) of section 10 of the 1947 Act. [608 G-609A, C-D]

All that sub-section (1) enacted was that the provisions of the Government of India Act, 1935 ceased to operate in relation to appointments to the civil services of, and civil posts under, the Crown in India, by the Secretary of State but sub-section (2) fully preserved the rights of and conditions of service applicable to holders of appointments already made by the Secretary of State, the only difference being that in place of the Secretary of State the employers of the incumbents became the respective Governments concerned. [610 B-C]

(4) The second proviso to section 14 of the 1954 Act has no application to the appellant inasmuch as he was not in actual receipt of a pension for his services in the Indian Civil Service under proviso to para 10 of Part D of second Schedule to the Constitution as added by the Constitution (Seventh Amendment) Act, 1956. The appellant having accepted appointment as a High Court Judge in continuation of his service as a District Judge, he never became entitled to pension for the period preceding his elevation to the Bench. Further he did not claim such a pension until the Accountant General requested him to indicate his option in accordance with the proviso to section 15 of the 1954 Act. The claim to two pensions, therefore, is inadmissible. [611E, H, 612D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 278 of 1972.

From the Judgment Order dated 29-6-1970 of the Gujarat High Court in SCA No. 46/68.

Appellant in person.

M. M. Abdul Khader, J. L. Jain and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by KOSHAL, J.-This is an appeal by certificate granted by the High Court of Gujarat under article 133(1)(c) of the Constitution of India and is directed against its judgment dated 29th June 1970 dismissing a petition under article 226 of the Constitution in which the appellant, who began his career as a member of the Indian Civil and was ultimately appointed a High Court Judge, prayed for the issuance of appropriate writs to ensure that he was granted two pensions independently of each other, one in relation to his service as a High Court Judge and the other for the service rendered by him prior to his appointment as such.

2. The facts leading to the petition decided by the impugned judgment are not in dispute and may be shortly stated. On the 6th October 1932 the appellant was appointed by the Secretary of State for India to the Indian Civil Service and was allotted to its Bombay cadre. On the 15th August 1947, he was serving as a District Judge in the Province of Bombay and thereafter continued in service in accordance with the provisions of section 10(2) of the Indian Independence Act, 1947 (hereinafter referred to as the 1947 Act) and article 314 of the Constitution. He was appointed Additional Judge of the Bombay High Court on the 12th June 1959 and on bifurcation of the State of Bombay on the 1st May 1960 became an Additional Judge of the High Court of Gujarat wherein he was made a permanent Judge on the 5th April 1961 and continued to serve as such till 10th February 1969 on which date he submitted his resignation from and relinquished charge of his office Through a letter dated 28th May 1966 addressed to the Registrar of the High Court of Gujarat, the Accountant General, Gujarat requested the appellant to exercise his option in accordance with the proviso to

section 15th of the high Court Judges (Conditions of Service) Act, 1954 (hereinafter called the 1954 Act) and to intimate whether he would receive his pension under Part I or Part II of the First Schedule to that Act. The stand taken by the appellant was that he was not bound to exercise any option and that pension in relation to his service as a High Court Judge was payable to him under section 14 of the 1954 Act read with Part I of the said First Schedule. The Government of India not having agreed with the stand taken by the appellant, he moved the High Court as stated above and in his petition challenged the validity of the second proviso to section 14 of the 1954 Act as also of clause (a) of section 15 thereof read with Part II of the said First Schedule.

3. The relevant provisions of law may with advantage be noticed here. Prior to 1947 a High Court Judge was entitled to pension in accordance with paragraphs 17, 18 and 19 of the Government of India (High Court Judges) order, 1937 (for short the 1937 order) promulgated by His Majesty in Council under the provisions of section 221 of the Government of India Act, 1935. Those paragraphs classified High Court Judges for purposes of pension into three categories according as (1) they were members of the Indian Civil Service, (2) members of services other than Indian Civil Service or (3) were not drawn from any of the civil services, and provided a different scale of pension for each category.

By virtue of section 10(2) of the 1947 Act, the 1937 order continued to be in force right up to the commencement of the Constitution, article 221(2) of which provided, inter alia:

> "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."

Sub-paragraphs (1) & (4) of paragraph 10 of Part D of the Second Schedule to the Constitution provided:

> "(1) There shall be paid to the Judges of the High Court of each State specified in Part A of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:-
>
> The Chief Justice 4,000 rupees Any other Judge 3,500 rupees"
>
> "(4) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the High Court of any State shall be governed by the provisions which immediately before the commencement of this Constitution, were applicable to the Judges of the High Court in the corresponding Province."

The provisions relating to pension contained in the 1937 Order thus continued to apply to High Court Judges till the 20th May 1954 when the 1954 Act came into force, after having been enacted by Parliament in exercise of its legislative power under article 221(2) of the Constitution. Section 14 of the 1954 Act then stood as follows;

> "Subject to the provisions of this Act, every Judge shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part I of the First Schedule:
>
> "Provided 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 sixty-two years, and in the case of a Judge holding office on the 5th day of October, 1963, sixty years; or
>
> (c) his retirement is medically certified to be necessitated by ill-health."

The following proviso was added to sub-paragraph (1) of paragraph 10 of Part D of the Second Schedule to the Constitution by the Constitution (Seventh Amendment) Act, 1956 (the 1956 Act, for brevity) with effect from the 1st November, 1956:

> "Provided that if a Judge of a High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced-
>
> (a) by the amount of that pension, and
>
> (b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and
>
> (c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity."

The 1956 Act also deleted sub-paragraph (4) above extracted.

A second proviso was added to section 14 of the 1954 Act by section 6 of the High Court Judges (Conditions of Service) Amendment Act, 1958 (for short the 1958 Act) with effect from the 1st November, 1956 and stated:

> "Provided further that if a Judge at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service in the Union or a State, the pension payable under this Act shall be in lieu of, and not in addition to, that pension."

Section 15 of and the relevant portions of Parts I, II and III of the First Schedule to the 1954 Act as amended by the 1958 Act with effect from the 1st November, 1956, may also be set out in extenso:

"15. Every Judge-

(a) who is a member of the Indian Civil Service shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part II of the First Schedule;

(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:

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

"THE FIRST SCHEDULE "PENSION OF JUDGES "PART I "1. The provisions of this Part apply to a Judge who is not a member of the Indian Civil Service or has not held any other pensionable civil post under the Union or a State and also apply to a Judge who, being a member of the Indian Civil Service or having held any other pensionable civil post under the Union or a State, has elected to receive the pension payable under this Part.

"2. Subject to the other provisions of this Part, the pension payable to a Judge to whom this Part applies and who has completed not less than seven years of service for pension shall be the basic pension specified in paragraph 3 increased by the additional pension, if any, to which he is entitled under paragraph 5.

"3. The basic pension to which such a Judge shall be entitled shall be-

(a) for the first seven completed years of service for pension, Rs. 5000 per annum; and

(b) for each subsequent completed year of service for pension, a further sum of Rs. 1,000 per annum:

"Provided that the basic pension shall in no case exceed Rs. 10,000 per annum.

"4. For the purpose of calculating additional pensions, service as a Judge shall be classified as follows:

"Grade I. Service as Chief Justice in any High Court;

"Grade II.Service as any other Judge in any High Court.

"5. For each completed year of service for pension in either of the grades mentioned in paragraph 4, the Judge who is eligible for a basic pension under this Part shall be entitled to the additional

pension specified in relation to that grade in the second column of the table annexed hereto:

"Provided that the aggregate amount of his basic and additional pension shall not exceed the amount specified in the third column of the said table in relation to the higher grade in which he has rendered service for not less than one completed year.

"TABLE "Service Additional pension Maximum aggregate per annum pension per annum.

	Rs.	Rs.
"Grade I.	740	20,000
"Grade II.	470	16,000"

"PART II

"1. The provisions of this Part apply to a Judge who is 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 the Indian Civil 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) the additional pension, if any, to which he is entitled under paragraph 3.

"3. If such a Judge has completed not less than seven years of service for pension in a High Court, he shall be entitled to an additional pension in accordance with the following scale:

Per annum Rs.

"For seven completed years of service for pension 1,333 For eight completed years of service for pension 1,600 For nine completed years of service for pension 1,866 For ten completed years of service for pension 2,133 For eleven completed years of service for pension 2,400 For twelve or more completed years of service for pension 2,666"

"PART III "1. The provisions of this Part apply to a Judge who has held any civil 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. 500 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.

2500 per annum."

4. The contentions raised on behalf of the appellant before the High Court were:

> A. The second proviso to section 14 of the 1954 Act is violative of articles 221, 314 and 14 of the Constitution and is, therefore, void. The appellant is accordingly entitled to elect for pension under Part I of the First Schedule to that Act without being required to forego the benefit of the pension earned by him prior to his elevation to the Bench.
>
> B. Clause (a) of section 15 of the 1954 Act is applicable only to a Judge who is a member of the Indian Civil Service. That Service, however, came to an end on the 15th of August, 1947 whereafter there was no Judge who could be said to be a member of that Service. The clause has, therefore, no application to any situation prevailing after the said date.
>
> C. Clause (a) of section 15 of the 1954 Act read with Part II of the First Schedule thereto is violative of article 14 of the Constitution so that in case the second proviso to section 14 of the 1954 Act is held to be good, the appellant would be entitled to pension under clause (b) of section 15 of that Act read with Part III of the said Schedule.

5. In regard to contention A the High Court held that the appellant having accepted appointment as a High Court Judge in Continuation of his service as a District Judge, he never became entitled to pension for the period preceding his elevation to the Bench so that the second proviso to section 14 of the 1954 Act never became applicable to him and the validity or otherwise of that proviso was irrelevant for the determination of his claim.

Contention B was negatived by the High Court on the ground that the expression "who is a member of the Indian Civil Service" appearing in clause (a) of section 15 of the 1954 Act had to be given some meaning in spite of the fact that the Indian Civil Service had ceased to be alive as such after August 15, 1947 and that the only reasonable way of interpreting the expression was to hold that it meant a person who had been a member of the Indian Civil Service immediately before August 15, 1947.

The conclusions arrived at by the High Court as a result of the consideration it gave to ground C may be summarised thus:

> (a) Under the Civil Service Regulations read with the 1937 Order a member of the Indian Civil Service who was promoted from the post of a District Judge to that of a High Court Judge was not entitled to pension for the period prior to his elevation to

the Bench. His right to pension accrued only when he relinquished the office of High Court Judge.

This position continued to obtain till the enforcement of the Constitution by reason of section 10(2) of the 1947 Act and after such enforcement by reason of the provisions of the Constitution, namely, articles 314 and 221(2) read with sub-paragraph (4) of paragraph 10 of Part D of the Second Schedule as that sub-paragraph stood prior to its deletion by the 1956 Act. Thus the Constitution itself through its provisions just above mentioned provided that High Court Judges who had earlier been members of the Indian Civil Service would get pension according to the formula contained in the 1937 Order which was a formula different from the one applicable to High Court Judges who had not been members of any of the civil services.

(b) The 1954 Act preserved the trichotomy envisaged by the 1937 Order but made an additional provision that if a High Court Judge who had earlier been a member of the Indian Civil Service felt that it would be more beneficial to him to receive pension on the basis of the provisions set out in section 14 of the 1954 Act read with Part I of the First Schedule thereto he could elect to do so. This additional provision was obviously introduced for the benefit of the erstwhile members of that Service.

(c) The Constitution itself put its seal on the trichotomy above detailed through articles 314 and 221(2) read with paragraph 10 of Part D of the Second Schedule and the differentiation made by the Constitution itself cannot be attacked as discriminatory when it was adopted by Parliament in the 1954 Act.

(d) The basis of calculating pension in clause (a) of section 15 of the Act read with Part II of the First Schedule thereto on the one hand and clause

(b) of section 15 of that Act read with Part III of the said Schedule on the other, is continuity of service. Service rendered by a person as High Court Judge is tagged on with any earlier service for the purpose of computation of basic pension; for, otherwise High Court Judges who had earlier been members of civil services would be deprived of the pensionary benefit in respect of their service rendered as such members. This was the reason for the trichotomy which was adopted not only by the 1937 Order but also by the 1947 Act and later on by the Constitution as well as the 1954 Act for the benefit of such Judges. The differentiation is not only not irrational but is eminently desirable and is based on rational criteria.

6. It was in the above premises that the High Court did not find any substance in the petition dismissed by the impugned order.

7. All the contentions raised before the High Court have been reiterated before us but after hearing the appellant in person at length we see no reason at all to differ from the conclusions reached by the High Court.

8. We may first take up contention B which need not detain us long. It is a cardinal principle of interpretation of statutes that the legislature does not use meaningless language and that every word used by it must be presumed to have some meaning even though the phraseology employed may some-times be obscure or ambiguous. The expression "who is a member of the Indian Civil Service" appearing in clause (a) of section 15 of the 1954 Act cannot be just ignored as being inapplicable to an existing situation and thus rendered otiose. As pointed out by the High Court what was meant was to describe as a class High Court Judges who had earlier been members of the Indian Civil Service so that they could be distinguished from High Court Judges who had not been such members. In this connection it is noteworthy that although the Indian Civil Service ceased to function as a Service of the Secretary of State for India after the 15th of August 1947 when the 1947 Act was enforced, its members were automatically appointed to corresponding posts under the Crown in connection with the affairs of the Dominion of India or of a Province by virtue of the provisions of sub-clause (1) of clause 7 of the India (Provisional Constitution) Order, 1947. That sub-clause runs thus:

> "7. (1) Subject to any general or special orders or arrangements affecting his case, any person who immediately before the appointed day is holding any civil post under the Crown in connection with the affairs of the Governor-General or Governor-General in Council or of a Province other than Bengal or the Punjab shall, as from that day, be deemed to have been duly appointed to the corresponding post under the Crown in connection with the affairs of the Dominion of India or, as the case may be, of the Province."

The Indian Civil Service was not abolished in so many words and, on the other hand, its members were given the right to continue in service on and after the 15th August, 1947 under the same conditions of service as were applicable to them immediately before that date. This is clearly made out by sub-sections (1) and (2) of section 10 of the 1947 Act which are reproduced below:

> "(1) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force the provisions of that Act relating to appointments to the civil services of, and civil posts under, the Crown in India by the Secretary of State, or the provisions of that Act relating to the reservation of posts.
>
> "(2) Every person who-
>
> (a) having been appointed by the Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof; or
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> (b) having been appointed by His Majesty before the appointed day to be a Judge of the Federal Court or of any Court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a Judge in either of the new Dominions:

> shall be entitled to receive from the Government of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be, which are served by the courts in which he is from time to time a Judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day."

All that sub-section (1) enacted was that the provisions of the Government of India Act, 1935 ceased to operate in relation to appointments to the civil services of, and civil posts under, the Crown in India, by the Secretary of State but sub-section (2) fully preserved the rights of and conditions of service applicable to holders of appointments already made by the Secretary of State, the only difference being that in place of the Secretary of State the employers of the incumbents became the respective Governments concerned. In this situation it would not be correct to say that the expression who is a member of the Indian Civil Service" would be meaningless and wholly inapplicable to any existing situation after the 15th August 1947; and when an Act of Parliament uses that expression surely it must be given the meaning that the High Court says it has, i.e., that it denotes persons who were members of the Indian Civil Service prior to the enforcement of the 1947 Act and were elevated to the Bench thereafter.

9. The other contentions raised by the appellant ignore one basic reason which provides justification for the trichotomy operating right from the enforcement of the 1937 Order. He does not (and of course cannot) challenge that trichotomy for the period prior to the commencement of the Constitution because his objection to it is based on discrimination violative of article 14 thereof. But then he has failed to realise what the Constitution itself enacted in paragraph 10 of its Second Schedule both before and after its amendment by the 1956 Act. Prior to the 1st November 1956 (which is the date on which the 1956 Act came into force) sub-paragraph (4) of the said paragraph 10 provided for pension of Judges of the High Court of any State being governed by the provisions which were applicable to such Judges before the commencement of the Constitution. Those provisions were, as pointed out above, contained in the 1937 Order which initiated the trichotomy. The High Court was thus right in holding that the Constitution itself adopted that trichotomy.

Then came the 1954 Act which was brought on the statute book by Parliament in exercise of its legislative powers under article 221(2) of the Constitution. The trichotomy introduced by the 1937 Order was repeated in the 1954 Act, till when it had been kept alive by sub-paragraph (4) above mentioned. And that trichotomy is good not only because it was adopted by the Constitution till legislation was enacted under article 221(2) thereof but also because it was necessitated by reason of High Court Judges being drawn from three different sources.

In so far as persons who had been members of the Indian Civil Service or of a State Judicial Service before being appointed as High Court Judges are concerned, the period of service put in by them in such Service has to be taken into account. On the other hand, High Court Judges recruited directly from the Bar do not have any prior service to their credit. All the High Court Judges, though holding equivalent posts, are thus not similarly situated, particularly in regard to the payment of pension

and other retirement benefits. That is why different provisions were considered necessary in the case of each of the three categories in regard to payment of pension. The classification so made is a reasonable classification based on intelligible differentia having a proper nexus to the object to be achieved.

The matter may be viewed from another angle. According to the proviso added to sub-paragraph (1) of the said paragraph 10 by the 1956 Act (which proviso we have set out above), the salary of a High Court Judge who "is in receipt of a pension..... in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments,.....

shall be reduced by the amount of that pension..... ....." That proviso would have fully applied to the case of the appellant if he had actually been in receipt of a pension prior to his elevation to the Bench. That he was not in receipt of any such pension is, however, admitted on all hands and, therefore, as held by the High Court, the second proviso to section 14 of the 1954 Act has no application to him. But then his argument is that he should be deemed to have been in receipt of a pension according to his entitlement immediately before he took oath as a High Court Judge. Even if we assume this argument to be correct, his case would not improve in any manner; for, then his salary as a High Court Judge would automatically come down to less than Rs. 3500 which is the salary payable to Judges who have not been members of any of the civil services earlier, and the difference would not be merely marginal. It is the case of the appellant that if he had retired from the Indian Civil Service immediately prior to the 12th June 1959 when he was elevated to the Bench he would have been entitled to receive a pension of Rs. 13350 per annum or about Rs. 1111 per mensem. On his elevation to the Bench he would in that case be entitled to a salary of less than Rs. 2400 as compared to Rs. 3500 payable to other High Court Judges who had not belonged to any civil services earlier. This difference in salary being substantial is itself a good reason for treating the appellant and other High Court Judges similarly situated in a manner different from High Court Judges not so situated and the same reasoning would apply to High Court Judges who had earlier been members of civil services other than the Indian Civil Service. It is of course not the case of the appellant that the proviso to sub-paragraph (1) of paragraph 10 above mentioned is itself not enforceable for one reason or the other; and if that be so, the trichotomy of which he complains becomes fully justifiable.

10. We may make it clear, however, that the appellant's plea that he must be held entitled to a separate pension for his service immediately preceding his elevation to the Bench cannot be accepted as correct in the face of the finding by the High Court that he was entitled to pension only after his retirement and, therefore, after his service as a High Court Judge came to an end, and that too according to the 1937 Order. The appellant has failed to show how that finding is erroneous. In this connection it may be stated that it was only after the Accountant General had requested him to indicate his option in accordance with the proviso to section 15 of the 1954 Act that he claimed two pensions, one in respect of the period prior to his elevation to the Bench and one for that for which he was a High Court Judge. At no time prior to that had he claimed any pension for his service as a member of the Indian Civil Service or any of the other civil services.

11. The trichotomy originating with the 1937 Order and finally adopted by the 1954 Act having been found by us not to suffer from any legal or constitutional infirmity and, on the other hand, to have the sanction of the Constitution itself, none of the three articles thereof,namely, 14, 221 & 314 on which the appellant banks, comes to his rescue. His claim is accordingly held to be without force and the appeal is dismissed but with no order as to costs.

S.R. Appeal dismissed.