

The Indian Law Reports

Before Bhopinder Singh Dhillon and M. R. Sharma, JJ.

GURNAM SINGH, JUDGE (RETD.),—Petitioner

versus

UNION OF INDIA and another,—Respondents.

Civil Writ Petition No. 1515 of 1980.

September 5, 1980.

Constitution of India, 1950—Article 221—High Court Judges (Conditions of Service) Act (XXVIII of 1954)—Sections 5 to 10 and 24(2) (a)—High Court Judges Rules, 1956—Rule 2—All India Services (Leave) Rules, 1955—Rule 20-B—High Court Judge not availing of earned leave during service—Such Judge on retirement—Whether entitled to salary in lieu of unutilized earned leave—No provision in the Act for payment of cash equivalent to leave salary—Rule 20-B—Whether applicable to such Judges—Payment of cash equivalent to leave salary—Whether a matter connected with leave of absence of a Judge within the meaning of section 24(2) (a).

Held, that the provisions of Article 221(2) of the Constitution of India, 1950, entitled the Judges to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined. A right to receive cash equivalent to leave salary in respect of the period of earned leave at the credit of a Judge can legitimately be held to be a right in respect of leave of absence. Such right to receive cash equivalent to leave salary is connected with the rights in respect of leave of absence which a Judge may be entitled to. A perusal of the provisions of the High Court Judges (Conditions of Service) Act, 1954, concerning leave to which the Judges are entitled, would clearly go to show that the provisions of the Act are not complete Code dealing with all rights in respect of leave of absence. This is further clear from the provisions of section 24(2) (a) of the Act wherein it has been provided that the rules which may be framed under the Act may provide for leave of absence of a Judge. This clearly indicates that the Act itself did not deal exhaustively with all rights of the Judges with respect to leave of absence and there were certain matters left in the Act which were to be covered by framing rules. It is in pursuance of the powers under section 24 of the Act that rule 2 of the High Court Judges Rules, 1956, has been enacted. It has been clearly provided therein that the conditions of service of Judges of the High

Court for which no express provision has been made in the Act shall be governed by the Rules for the time being applicable to the Indian Administrative Service. Rule 20-B of the All India Services (Leave) Rules, 1955, will, therefore, apply to Judges. The sphere regarding conditions of service of the Judges of the High Court for which no express provision has been made in the Act is to be determined by reference to rule 20-B as there is no provision either in the Act or in the Rules framed therein which debar the Judges from claiming payment of cash equivalent to leave salary. Rule 20-B of the Rules will be applicable and a Judge will be entitled to salary in lieu of unutilized earned leave. (Paras 8 and 12).

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents:—

- (i) to produce the complete records of the case;
- (ii) it be declared that the petitioner is entitled to the payment of cash equivalent to the leave salary for a period of 180 days including the dearness allowance for that period. The respondents be directed by issue of a writ of mandamus to pay it to the petitioner forthwith;
- (iii) the respondents be directed to re-fix the petitioner's pension while taking into account the dearness allowance admissible to him;
- (iv) the consequential benefits in the nature of arrears of salary etc. may also be granted;
- (v) the costs of this petition may also be awarded to the petitioner.

Jawahar Lal Gupta, Advocate, for the Petitioner.

Kuldip Singh, Advocate, for Respondent No. 1.

JUDGMENT

Bhupinder Singh Dhillon, J.

(1) The petitioner was a member of the Superior Judicial Service in the State of Haryana before he was elevated to the Bench of the Punjab & Haryana High Court on 24th February, 1972. He attained the age of 62 years on 18th March, 1980, and retired as a Judge of the Punjab and Haryana High Court. The petitioner had to his

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credit earned leave which was not availed of by him during the service. The petitioner claimed salary in lieu of the unutilised earned leave. The petitioner also claimed that he is entitled to the dearness allowance. Both these reliefs were denied to the petitioner as, according to the respondents, the petitioner is not entitled to receive cash equivalent to the leave salary in respect of the period of unutilised earned leave nor was he entitled to dearness allowance. It is in this situation that the petitioner filed the writ petition under Article 226 of the Constitution of India with the prayer that suitable writ, direction or order allowing the prayers made in the petition, be issued.

(2) In the reply filed on behalf of the Government of India by way of written statement of Shri K. C. Kankan, Deputy Secretary to Government of India, the facts are not disputed. However, it has been pleaded that the petitioner is not entitled to receive cash equivalent to leave salary in lieu of period of earned leave to his credit on the date of his retirement, as rule 2 of the High Court Judges Rules, 1956 (hereinafter called the 'Rules') would not make applicable rule 20-B of the All-India Services (Leave) Rules, 1955, which are applicable to the members of the Indian Administrative Service. As regards the payment of dearness allowance, it has been conceded in the return that the petitioner is entitled to the same. It has been averred that on 3rd July, 1980, Government of India issued orders stating that the Judges of the High Court are entitled to draw dearness allowance from 1st December, 1978. It has, therefore, been averred that the petitioner will be entitled to the dearness allowance claimed by him.

(3) The provisions of Article 221 of the Constitution of India, which deals with the salary, etc., of the Judges, are as follows :—

“221. *Salaries, etc., of Judges.*—(1) There shall be paid to the Judges of each High Court 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 disadvantage after his appointment.”

(4) The Parliament has enacted an Act called the High Court Judges (Conditions of Service) Act, 1954 (hereinafter called the ‘Act’). The provisions of section 3 of the Act deal with the kinds of leave admissible to a Judge. Section 4 mainly deals with the leave account showing the amount of leave due and further provides that one-fourth of time spent by a Judge on actual service shall be credited to his leave account. Section 5 deals with the aggregate amount of leave which may be granted to a Judge. Section 5-A deals with the commutation of leave on half allowance into leave on full allowance. Section 6, deals with the grant of leave not due whereas section 7 deals with the grant of special disability leave. Section 8 provides for extraordinary leave. Section 9 makes provision for leave allowances and section 10 deals with the allowances for joining time. Section 13 provides that authority competent to grant and refuse leave to a Judge or revoke, curtail leave to a Judge shall be the Governor of the State in which the principal seat of the High Court is situated, after consultation with Chief Justice of that High Court. Section 14 deals with the pension payable to the Judges. It is not necessary to make reference to other provisions of the Act and suffice it to say that section 24 of the Act is as follows :—

“24. *Power to make rules.*—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) leave of absence of a Judge;
- (b) pension payable to a Judge;
- (c) travelling allowances to a Judge;
- (c-a) use of official residence by a Judge under sub-section (1) of section 22A;
- (d) facilities for medical treatment and other conditions of service of a Judge;

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(e) any other matter which has to be, or may be, prescribed.

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(5) In pursuance of the provisions of section 24 of the Act, the Rules (i.e., High Court Judges Rules, 1956) have been framed. Rule 2 of the Rules is as follows:—

“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 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 holding the rank of Joint Secretary to the Government of India stationed at New Delhi:

Provided further that, in respect of facilities for medical treatment and accommodation in hospitals the provisions of the All-India Service (Medical Attendance) Rules, 1934, in their application to a Judge, shall be deemed to have taken effect from the 26th January, 1950 :

Provided also that where at the request of the President, any Judge undertakes to discharge any function outside his normal duties in any locality away from his headquarters, the President may, having regard to the nature of such function and locality, determine the facilities that may be afforded to such Judge including accommodation, transport and telephone so long as he continues to discharge such function, either without any payment or at a concessional rate.”

(6) It may appropriately be pointed out at this place that rule 20-B of the All-India Services (Leave) Rules, 1955, which is applicable to the members of the Indian Administrative Service is as follows:—

- “20-B. *Payment of cash equivalent of leave salary.*—(1) The Government shall *suo-moto* 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, 1953, having attained the age of 58 years on or after the 30th September, 1977, the cash equivalent of leave salary in respect of the period of earned leave to his credit on the date of his retirement, subject to a maximum of 180 days.
- (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 one-time settlement.
- (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.
- (4) From the cash equivalent so worked out no deduction shall be made on account of pension and pensionary equivalent of other retirement benefits.
- (5) A member of the Service who retires from service on attaining the age of compulsory retirement while under suspension shall be paid the cash equivalent of leave salary under sub-rule (1) above in respect of the period of earned leave at his credit on the date of his superannuation, provided that in the opinion of the authority competent to order reinstatement, the member of the Service has been fully exonerated and the suspension was wholly unjustified.”

(7) It has been contended on behalf of the petitioner that in view of the provisions of Rule 2, the petitioner is entitled to the

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benefit of Rule 20-B of the All India Services (Leave) Rules, 1955, as there is no provision either in the Act or the rules made thereunder, which covers the sphere of Rule 20-B. On the other hand, it has been contended by Mr Kuldip Singh, the learned counsel for the Union of India, that the Act is a complete Code in itself as regards the question relating to leave pertaining to High Court Judges and, therefore, it cannot be held that in view of the provisions of Rules, Rule 20-B of the All India Services (Leave) Rules, 1955, would be applicable. In the alternative, it has been contended that payment of cash equivalent to leave salary in respect of period of earned leave is not a matter connected with the leave of absence of a Judge as postulated by section 24 of the Act and, therefore, Rule 20-B aforesaid cannot be read so as to hold that the said rule can be held to be applicable for carrying on the purposes of the Act. Thirdly, it has been contended, as also it has been averred in the return, that leave Rules as applicable to the members of the Indian Administrative Service are completely different than, the one applicable to the Judges; therefore, Rule 20-B of the All-India Services (Leave) Rules, 1955, cannot be made applicable to the Judges in isolation.

(8) After hearing the learned counsel for the parties and going through the pleadings, we are of the opinion that the petitioner must succeed. The provisions of Article 221(2) of the Constitution of India entitle the Judges to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined. A right to receive cash equivalent to leave salary in respect of period of earned leave at the credit of a Judge can legitimately be held to be a right in respect of leave of absence. Such right to receive cash equivalent to the leave salary is connected with the rights in respect of leave of absence, which a Judge may be entitled to. It would thus be seen that the provisions of Article 221(2) of the Constitution of India are widely worded and include all such rights including the right to receive cash equivalent to leave salary in respect of period of earned leave which right is in respect of leave of absence. A perusal of the provisions of the Act concerning leave, to which the Judges are entitled, would clearly go to show that the provisions of the Act are not complete Code dealing with all rights in respect of leave of absence. Sections 3 to 8 of the Act deal with the various kinds of leave to which the Judges are entitled. Sections 9 and 10 deal with the

leave allowances. Nothing could be pointed out by Mr. Kuldip Singh, the learned counsel for the Union of India, from the provisions of the Act to show that the Act itself is a complete Code regarding all rights regarding leave of absence. This inference further finds support from the provisions of section 24 of the Act. In sub-section (2) of section 24, it has been provided that in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

“(a) leave of absence of a Judge;

(b) * * * * *

This clearly indicates that the Act itself did not deal exhaustively with all rights of Judges with respect to leave of absence and there were certain matters left in the Act which were to be covered by framing rules. It is in pursuance of the powers under section 24 of the Act that rule 2 of the Rules has been enacted. It has been clearly provided therein that the conditions of service of Judges of the High Court for which no express provision has been made in the Act, shall be governed by the Rules for the time being applicable to the Indian Administrative Service. It would thus be obvious that the provisions of section 24 of the Act read with rule 2 of the Rules make it amply clear that the provisions of the Act are not a complete Code regarding all rights of the Judges in respect of leave of absence and, therefore, the field which is not covered by the provisions of the Act has to be covered by the rules which are applicable to the members of the Indian Administrative Service. Therefore, the first contention raised on behalf of the Union of India is without any merit.

(9) As regards the second contention on behalf of the Union of India, the same also appears to be without any merit. The Act deals with the conditions of service of the High Court Judges. In addition to the rules regarding leave of absence of the Judges, the Act also makes provisions regarding pension payable to the Judges, family pension and gratuities, commutation of pension, provident fund, travelling allowances, facility of rent-free houses, conveyance allowances, sumptuary allowances, etc. Rule 2 clearly provides that if there is no express provision in the Act regarding the conditions of service of the Judges, the rules for the time being applicable to

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the members of the Indian Administrative Service shall be applicable. It would thus be seen that no challenge can be made to the provisions of rule 2 of the Rules as under sub-section (1) of section 24 of the Act, the Central Government has been empowered to make rules to carry out the purposes of the Act. As already mentioned, the purposes of the Act concern the conditions of service of High Court Judges and not only the matters pertaining to the leave of absence. In other words, if the contention of the learned counsel for the Union of India is accepted, rule 2 of the Rules has to be held to be *ultra vires* of the Act. No such plea has been taken in the return nor any challenge has been made to the *vires* of the rule. However, in addition to the general powers as given in sub-section (1) of section 24 of the Act, the enactment of rule 2 can be justified under clauses (a) and (b) of sub-section (2) of section 24 of the Act as well. As already observed, the provisions of Article 221 of the Constitution of India are wide enough to include such allowances and such rights in respect of leave of absence and pension, as may be determined by law.

(10) It may be appropriately observed at this stage that the Union of India in its return in paragraph 8 has categorically taken the stand that the Government of India have recently decided that the Judges of the High Court are entitled to draw Dearness Allowance with retrospective effect from 1st December, 1978, under Rule 2 of the Rules and orders have been issued on 3rd July, 1980. It is to be seen that even though the grant of Dearness Allowance has not been provided for under the Act or the Rules, in view of the applicability of Rule 2 which makes the Indian Administrative Service Rules applicable where there is no provision under the Act or the Rules, the Government of India decided that the Judges are also entitled to the benefit of Dearness Allowance which is admissible to the members of the Indian Administrative Service under the Rules. Therefore, the argument that Rule 2 goes beyond the rule making power, is without any merit.

(11) Moreover, we are unable to hold that the payment of cash equivalent to leave salary is not a right connected with the leave of absence of a Judge. A Judge is entitled to earned leave as provided under the Act and if he has not utilised the earned leave, whether he should be made cash payment equivalent to the leave salary is certainly a question which relates to the leave of absence of a Judge; therefore, the second contention is also without any merit.

(12) As regards the last contention we may observe that if in view of the provisions of rule 2 of the Rules, rule 20-B of the All-India Services (Leave) Rules, 1955, is applicable to the service conditions of a Judge, the argument that the leave rules governing the Indian Administrative Services are different than the one which govern the High Court Judges, is really without any merit. The provisions of rule 2 of the Rules are very widely worded. It is quite clear from the said rule that the sphere regarding the conditions of service of the Judges of the High Court for which no express provision has been made in the Act, shall be determined by the rules which are for the time being applicable to the members of the Indian Administrative Service. As already observed, there is no provision either in the Act or in the Rules framed thereunder to come to a contrary conclusion that the Judges have been debarred from the payment of cash equivalent to leave salary. This is certainly a condition of service. The contention of Mr. Kuldip Singh that the right to receive payment equivalent to leave salary is not a condition of service of the Judges is really without any merit. The learned counsel conceded that it has been firmly held by now that right to receive pension is a right which forms part and parcel of the conditions of service. Right to receive pension accrues only after retirement. Reference in this connection may be made to a decision of their Lordships of Supreme Court in *State of Punjab v. K. R. Erry and Sobhao Raj Mehta* (1). On the same analogy, even if the right to the benefit of payment of cash equivalent to leave salary accrues on the date of retirement, it cannot be successfully contended that this right is not a part of the conditions of service of a Judge. The comparison of the rules applicable to the members of the Indian Administrative Service regarding leave with the Leave Rules as provided in the Act pertaining to the Judges is highly inapt and is not called for. The moment it is held that in view of the provisions of rule 2 of the Rules, the question of grant of cash equivalent to the leave salary has not been dealt with in the Act or the Rules made thereunder, rule 20-B of the All India Services (Leave) Rules, 1955, shall be applicable and a Judge will be entitled to the benefit of the said rule.

(13) The contention that rule 20-B of the All India Services (Leave) Rules, 1955, provides for the retirement age at 58 years as regards Indian Administrative Service whereas retirement age of

(1) 1972 S.L.R. 836.

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a High Court Judge is 62 years and, therefore, rule will not apply, is again without any merit. When rule 2 of the Rules has made the rules as applicable to the Indian Administrative Service regarding the conditions of service which are not provided for in the Act, applicable to the Judges, the consequential changes in rule 20-B of the All India Services (Leave) Rules, 1955, keeping in the view the provisions of the Constitution and the Act, shall have to be read in rule 20-B aforesaid. Therefore, while applying rule 20-B of the All India Services (Leave) Rules, 1955, in case of Judges of the High Court, the age of 58 years mentioned in the rules shall have to be read as 62 years.

(14) No other point has been raised.

(15) For the reasons recorded above, we allow this petition with cost of Rs. 200 and direct that the petitioner shall be entitled to receive cash equivalent to the leave salary in respect of the period of earned leave at his credit on the date of retirement in accordance with the provisions of R. 20-B of said Rules. As already observed, the claim of the petitioner regarding the grant of dearness allowance has already been conceded by the Union of India.

(16) Mr. Kuldip Singh, the learned counsel for the Union of India, has made an oral prayer for the grant of certificate for leave to appeal to the Supreme Court. We are of the opinion that the matter being so obvious, it is not a fit case where the requisite certificate may be granted. The same is, therefore, declined.

N.K.S.

Before S. S. Sandhawalia, C.J. and R. N. Mittal, J.

KARTAR SINGH,—Appellant.

versus

PUNJAB STATE and others,—Respondents.

R.S.A. No. 357 of 1975.

February 17, 1981.

Constitution of India 1950—Article 311—Punjab Civil Services Rules, Volume II—Rule 5.32—Government servant given extension