

GAHC010115162016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 4224/2016

1:VIRENDRA DUTT GYANI
S/O. VISHNU DUTT GYANI, R/O. 57 RAVINDRA NAGAR, OLD PALASIA,
INDORE-452001,MADHYA PRADESH.

VERSUS

1:THE UNION OF INDIA and 5 ORS
THROUGH SECY., MINISTRY OF LAW AND JUSTIVE, JAISALMER HOUSE,
MAN SING ROAD, NEW DELHI-110001.

2:THE CENTRAL PENSION ACCOUNTING OFFICE
GOVT. OF INDIA
TRIKOOT-2
BIKAJI CAMA PALACE
NEW DELHI-110066.

3:THE A.G. AandE
ACCOUNTANT GENERAL
ASSAM GUWAHATI H.C. JUDGES MAIDAN GAON
BELTOLA
GHY.
PIN-781029.

4:THE GAUHATI HIGH COURT
REP. BY THE REGISTRAR GENERAL
GAUHATI HIGH COURT
M.G. ROAD
GHY.-781001.

5:THE MANAGER
STATE BANK OF INDIA
CENTRALIZED PENSION PROCESSING CENTRE
GOVINDPURA BRANCH PREMISES

BHOPAL-462026
M.P.

6:THE BRANCH MANAGER
STATE BANK OF INDIA
PBB BRANCH NO.4429
Y.N. ROAD
INDORE M.P.

Advocate for the Petitioner : MS.B CHOWDHURY

Advocate for the Respondent : C.G.C.

BEFORE
HONBLE MR. JUSTICE UJJAL BHUYAN
HON BLE MR. JUSTICE NELSON SAILO

ORDER

Date : 15-03-2018

J U D G M E N T A N D O R D E R

(Ujjal Bhuyan, J)

Heard Mr. P.K. Goswami, learned senior counsel for the petitioner; Mr. C. Baruah, learned standing counsel, Accountant General, Assam; Mr. SK Medhi, learned senior counsel for the Gauhati High Court; and Mr. K.K. Parasar, learned counsel for the Central Government.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to pay the petitioner 20 % additional quantum of pension on his basic monthly pension w.e.f. 30-07-2015 i.e. from the first day of his entering into the 80th year of his age.

3. Petitioner was a practicing advocate in the High Court of Madhya Pradesh before he was elevated as a judge of the Madhya Pradesh High Court in May, 1984. In April, 1994, he was transferred to the Gauhati High Court where from he retired as Acting Chief Justice on 29-07-1998 on attaining the age of superannuation i.e., 62 years.

4. Petitioner's conditions of service are governed by the *High Court Judges (Salaries and Conditions of Service) Act, 1954*. It is stated that as per Section 17B of the *High Court Judges (Salaries and Conditions of Service) Act, 1954* (briefly 'the Act' hereinafter), a retired High Court judge is entitled to 20% of additional quantum of pension on the basic pension from 80 years to less than 85 years.

5. Petitioner was born on 30-07-1936. He retired on attaining the age of superannuation i.e. 62 years on 29-07-1998. He thus completed 79 years on 29-07-2015 and entered into his 80th year on 30-07-2015. Therefore, according to the petitioner, he became entitled to the additional quantum of pension @ 20% of basic pension w.e.f. 30-07-2015.

6. Petitioner submitted representation dated 01-08-2015 addressed to respondent No.5 through respondent No.6 claiming additional quantum of pension of 20% of basic pension as per Section 17B of the Act. However, there was no response to such representation.

7. Petitioner thereafter served a legal notice dated 04-03-2016 to respondent No.5 wherein it was stated that petitioner had entered into his 80th year on 30-07-2015 and therefore he was entitled to the benefit of additional pension as above from the said date. Responding to the above notice, Registrar General, Gauhati High Court in his letter dated 17-03-2016 informed the Secretary, Ministry of Law and Justice (Department of Justice), Government of India that petitioner had attained 80 years of age on 30-07-2015 and therefore he would be entitled to additional quantum of 20 % of basic pension w.e.f. 30-07-2015 as per Section 17B of the Act.

8. However, Director in the Department of Justice, Ministry of Law and Justice, Government of India vide his letter dated 30-03-2016 replied to the legal notice of the petitioner and stated that petitioner would be entitled to the benefit of additional quantum of pension on the basic pension w.e.f. 01-08-2016 i.e. on attaining the age of 80 years. In his letter dated 05-04-2016 addressed to the Registrar General of the High Court, he stated the

above with the clarification that the date mentioned in his reply to the legal notice should be read as 30-07-2016. Senior Accounts Officer (Legal Cell), Ministry of Finance, Government of India, had also responded to the legal notice by saying that the additional quantum of pension on attaining the age of 80 years would be admissible from the first day of the month in which the date of birth falls. By a subsequent letter dated 22-04-2016, Registrar General, Gauhati High Court informed the office of Respondent No.3 that petitioner would be attaining the age of 80 years on 30-07-2016, his date of birth being 30-07-1936. Therefore, petitioner would be entitled to additional quantum of 20% of basic pension w.e.f. 30-07-2016.

9. Aggrieved, present writ petition has been filed seeking the relief as indicated above.

10. Notice in this case was issued on 22-07-2016 and an interim order was passed to the effect that as there was no dispute on the entitlement of the petitioner to the additional 20% pension w.e.f. 30-07-2016, it should be disbursed to him from the said date under Section 17B of the Act.

11. An affidavit-in-opposition has been filed on behalf of the Accountant General, Assam, respondent No.3. It is stated that petitioner retired on 30-07-1998 (AN) as Acting Chief Justice of Gauhati High Court. Consequently, petitioner is drawing regular monthly pension through State Bank of India A/C No.10099432908 on the strength of pension payment order issued by the office of Accountant General (Accounts and Entitlements), Assam. It is stated that in terms of Office Memorandum (OM) dated 11-05-2009 issued by the Government of India, Ministry of Law and Justice, monthly pension of the petitioner was revised @ Rs.40,000/- per month plus other allowances w.e.f. 01-01-2006. In this connection, a Special Seal Authority letter dated 09-07-2009 was issued from the office of respondent No.3 to respondent No.2. In the same letter, request was made to make payment of admissible 20% additional quantum of basic pension plus other admissible allowances w.e.f. 30-07-2016 upon attainment of 80 years of age by the petitioner. Similarly, entitlement of rates for additional quantum of pension beyond 85 years was also mentioned in the letter dated 09-07-2009.

11.1. After receipt of a copy of the writ petition, office of respondent No.3 issued another Special Seal Authority letter dated 12-08-2016 to respondent No.2 requesting the said authority to make necessary arrangement for payment of the aforesaid 20% increased pension with successive rates for the succeeding periods to the petitioner.

11.2. Therefore, it is contended that grievance of the petitioner has been addressed at the level of respondent No.3 and that the matter was before respondent No.2 being the designated authority to redress the grievance of the petitioner.

11.3. It is further contended that fixation of 30-07-2016 as the date from which the 20% additional pension would be admissible to the petitioner is correct. Special Seal Authority letters dated 09-07-2009 and 12-08-2016 authorizing 20% additional pension w.e.f. 30-07-2016 were issued in terms of Section 17B of the Act.

12. An affidavit-in-opposition has also been filed by the Registrar General of Gauhati High Court, respondent No.4. It is stated that authority for enhancement of pension etc. lies with respondent Nos. 2 and 3 and payment would be made by respondent No.5. Stating that Gauhati High Court is not a necessary party, the affidavit has only highlighted the stand of the Gauhati High Court. It is stated that according to the petitioner himself, his date of birth is 30-07-1936. If that be so, petitioner would attain the age of 80 years only on 30-07-2016 and therefore, he would be entitled to 20% of additional quantum of basic pension w.e.f. 01-08-2016 and not from 01-08-2015. To be entitled to 20% of the additional quantum of basic pension, an incumbent must attain the age of 80 years and mere stepping into the 80th year will not make an incumbent entitled to such benefit. Stand taken by the office of the Accountant General that petitioner would be entitled to the enhanced benefit of 20% pension upon completion of 80 years of age on 30-07-2016 has been relied upon. Petitioner having attained the age of 80 years only on 30-07-2016, the benefit in question would accrue to him from 01-08-2016. Therefore, writ petition should be dismissed.

13. Petitioner has filed reply affidavit to the affidavit filed by respondent No.3. While contesting the stand of respondent No.3, petitioner has stated that the High Court in its letter dated 17-03-2016 had admitted that as per Section 17B of the Act, petitioner would be entitled to additional quantum of 20% pension w.e.f. 30-07-2015 and not from 30-07-2016. It is contended that the expression “*from 80 years*” makes it manifestly clear that it is from the commencing point of the 80th year. It is further contended that respondents have failed to understand the object behind insertion of Section 17B in the Act which is meant to provide some succour to the ageing retired judges. Stand taken by the respondents would defeat the very purpose and object of Section 17B.

14. Detailed submissions have been made by learned counsel for the parties which have been duly considered.

15. The *High Court Judges (Salaries and Conditions of Service) Act, 1954* (already referred to as “the Act” herein) was enacted to regulate the salaries and certain conditions of service of the judges of High Court. Section 14 deals with pension payable to judges in accordance with the scale and provision in part-I of the first schedule. While Section 17 deals with extraordinary pensions, Section 17A provides for family pensions and gratuities.

16. The *High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2009* was enacted to amend the Act and also the *Supreme Court Judges (Salaries and Conditions of Service) Act, 1958*. As per Section 4 of this Act, after Section 17A in the Act, the following section should be inserted as Section 17 B :-

“17-B. Additional quantum of pension or family pension- Every retired Judge or after his death, the family, as the case may be, shall be entitled to an additional quantum of pension or family pension in accordance with the following scale:-

Age of pensioner or family pensioner

Additional quantum of pension or family pension

<i>From eighty years to less than eighty five years</i>	<i>Twenty percent of basic pension or family pension</i>
<i>From eight five years to less than ninety years</i>	<i>Thirty percent of basic pension or family pension</i>
<i>From ninety years to less than ninety five years</i>	<i>Forty percent of basic pension or family pension</i>
<i>From ninety five years to less than hundred years</i>	<i>Fifty percent of basic pension or family pension</i>
<i>From hundred years or more</i>	<i>Hundred percent of basic pension or family pension.”</i>

17. Therefore, in the contextual facts of the present case, as per Section 17B, every retired judge shall be entitled to an additional quantum of pension in accordance with the scale mentioned therein. In this case, we are concerned with the first slab as per which, a retired judge from 80 years to less than 85 years would be entitled to additional quantum of pension @ 20% of basic pension.

18. Petitioner had retired from service on attaining the age of superannuation on 29-07-1998. His date of birth is 30-07-1936. Therefore, on 29-07-2015 he completed 79 years of age. He entered into the 80th year of age on 30-07-2015 and completed 80 years on 29-07-2016. According to the petitioner, he would be entitled to the first scale of benefit as per Section 17B w.e.f. 30-07-2015 when he stepped into his 80th year. On the other hand, stand of the respondents is that the benefit of the first scale under Section 17B would be available

to the petitioner on his completion of 80th year i.e. from 30-07-2016. This is the bone of contention which we are called upon to answer in this proceeding.

19. Therefore, question for consideration is, whether in the facts and circumstances of the case, petitioner would be entitled to the additional quantum of pension @ 20% of basic pension from 30-07-2015 or from 30-07-2016 as per the first scale provided under Section 17B of the *High Court Judges (Salaries and Conditions of Service) Act, 1954*, as amended?

20. To answer this question, it is necessary to examine the meaning of the expression "*from eighty years*" as appearing in Section 17B. As noticed above, the benefit of additional quantum of pension would be entitled to a retired judge from eighty years to less than eighty five years. What precisely would be the meaning of the expression "*from eighty years*"?

21. In *Collins English Dictionary*, the word "*from*" has been defined to mean indicating the point of departure, source, distance, cause, change of state etc. Mr. Goswami had also argued that the word "*from*" is used to specify a starting point in spatial movement i.e. to specify starting point in an expression of limits. In *Black's Law Dictionary*, 6th Edition, the word "*from*" has been defined to mean implying a starting point, whether it be of time, place or condition, and having a starting point of motion, noting the point of departure, origin, withdrawal etc. However, it has been explained that the word "*from*" does not have an absolute and invariable meaning but should receive an inclusion or exclusion construction according to the intention with which such word is used.

22. Therefore, as per the dictionary meaning, the expression "*from eighty years*" would indicate the starting point of eighty years. However, as a note of caution, it has also been clarified that inclusiveness or exclusiveness associated with the expression would have to be interpreted having regard to the intention for use of such word or expression.

23. Petitioner is right when he says that Section 17B was inserted in the parent Act in the year 2009 to provide some succour to the ageing retired judges. Long back Winston Churchill had said that service rendered by judges demands the highest qualities of learning, training and character. These qualities are not to be measured in terms of pounds, shilling and pence according to the quantity of work done. After rendering such service to the nation, it is the duty of the State to ensure that a retired judge who has entered the autumn of his life is adequately looked after. A retired judge at the fag end of his life has peculiar problems on account of his advanced years and failing health. It is to cater to such a situation that Parliament in its wisdom had amended the Act in the year 2009 by inserting Section 17B entitling every retired judge to additional quantum of pension or in case of death, the family to additional quantum of family pension in the scale mentioned.

24. If this is the object behind insertion of Section 17B, we must adopt such an interpretation which effectuates the object of the provision and which does not frustrate the object.

25. Justice G.P. Singh in his seminal work *Principles of Statutory Interpretation* dealt with the subject of purposive construction of statutes. According to him, when material words are capable of bearing two or more constructions, the most firmly established rule for construction of such words of all statutes is the rule laid down in *Heydon 's* case. This rule which is also known as 'purposive construction' or 'mischief rule', requires consideration of four matters while construing an Act –

- (i) what was the law before the making of the Act;
- (ii) what was the mischief or defect for which the law did not provide;
- (iii) what is the remedy that the Act has provided; and
- (iv) what is the reason of the remedy.

The rule than directs that the courts must adopt that construction which shall suppress the mischief and advance the remedy.

25.1 In ***Bengal Immunity Co. -Vs- State of Bihar, AIR 1955 SC 661***, Supreme Court succinctly explained the rule holding that it is a sound rule of construction of a statute for the sure and true interpretation of all statutes in general, including beneficial ones. After discerning and considering the four things as noticed above, the court is always to make such construction as shall suppress the mischief and advance the remedy; to suppress subtle inventions and evasions for continuance of the mischief; and to add force and life to the cure and remedy, according to the true intent of the makers of the Act.

25.2. According to Lord Reid, "the word mischief is traditional". He expanded it to include "the facts presumed to be known to Parliament when the Bill which became the Act in question was before it" and "the unsatisfactory state of affairs" disclosed by these facts "which Parliament can properly be supposed to have intended to remedy by the Act".

25.3 As has been observed by the Supreme Court, to interpret a statute in a reasonable manner, the Court must place itself in the chair of a reasonable legislator. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner as to see that the object of the Act is fulfilled.

25.4. In selecting different interpretations, Court would adopt that which is just, reasonable and sensible. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty has to be avoided.

25.5. Of course this rule would have no application when the words are susceptible to only one meaning and no alternative construction is reasonably open.

26. While on purposive construction, it would be useful to refer to the decision of the

Supreme Court in ***New India Assurance Company Limited -Vs- Nusli Neville Wadia, (2008) 3 SCC 279***, which was placed before us by learned counsel for the petitioner. In that case, Supreme Court was considering the question as to who should lead evidence in a proceeding under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*. In the context of that question, Supreme Court observed that a literal construction would lead to an anomalous situation because the landlord may not be heard at all or may not even be permitted to adduce any evidence in rebuttal. In such a situation, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled. Referring to *Purposive Interpretation in Law* by Aharon Barak, Justice Sinha speaking for the Bench explained purposive construction as under :-

“Hart and Sachs also appear to treat ‘purpose’ as a subjective concept. I say ‘appear’ because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator’s shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably.”

27. Let us now revert back to Section 17 B of the Act which though quoted above, is again extracted hereunder for convenience of the deliberation:-

“17-B. Additional quantum of pension or family pension- Every retired Judge or after his death, the family, as the case may be, shall be entitled to an additional quantum of pension or family pension in accordance with the following scale:-

Age of pensioner or family pensioner

Additional quantum of pension or family pension

From eighty years to less than eighty five years

Twenty percent of basic

pension or family pension

From eight five years to less than ninety years

Thirty percent of basic pension or family pension

From ninety years to less than ninety five years

Forty percent of basic pension or family pension

From ninety five years to less than hundred years

Fifty percent of basic pension or family pension

From hundred years or more

Hundred percent of basic pension or family pension."

28. If we look at the first two slabs, we find that the first slab is from 80 years to less than 85 years and the second slab is from 85 years to less than 90 years. The second expression in both the slabs is quite clear : it is either less than 85 years or less than 90 years. Now, if we apply the interpretation given by the respondents to the first expressions i.e., from 80 years and from 85 years, consequence would be that on completion of 80 years to less than 85 years a retired judge would be entitled to the first scale of additional pension and again on completion of 85 years to less than 90 years, the retired judge would be entitled to the second scale of additional pension. In this process, not only the 80th year would stand excluded, even the 85th and 90th years would be excluded. Likewise, the 95th year as well as the 100th year would also be excluded. This could not be and certainly was not the intention of the law makers. Therefore, by applying purposive interpretation, we have no hesitation in our mind that the interpretation put forward by the respondents is not only unreasonable and irrational leading to an anomalous situation, it would also defeat the very object behind insertion of Section 17B in the Act.

29. This question can also be looked at from another angle. When we say "from 2016 onwards" what do we mean? Whether it would be from 01-01-2016 i.e., from the first day of the year 2016 or on completion of the year 2016 on 31-12-2016? The answer is quite apparent; it has to be from the first day of the year itself.

30. In the course of hearing, Mr. Goswami had also brought to our notice a Single Bench decision of the Karnataka High Court, Dharwad Bench in the case of *Siddangouda Shivabasanagouda Ayyangoudra -Vs- Principal Accountant General (A & E)*, decided on 03-09-2014. In that case also an identical issue had cropped up; petitioner had retired from service on 30-04-1992 on attaining the age of superannuation. Petitioner claimed entitlement to receive 20% additional quantum of pension from 80 to 85 years on the strength of Government Order dated 13-10-2010. Petitioner had completed 79th year on 13-04-2013. His 80th year started from 13-04-2013. Therefore, he claimed entitlement to the above benefit from 13-04-2013. Respondents rejected such claim of the petitioner and declared that petitioner would complete his 80th year on 13-04-2014 and thereafter his request would be considered. Following an earlier decision of the Court, the writ petition was allowed. Karnataka High Court quashed the impugned decision and directed the respondents to pay 20% additional pension from the 1st day of 80th year i.e. from 13-04-2013 with 6% interest per annum.

31. The decision of Karnataka High Court is a logical outcome of the line of reasoning adopted by us.

32. Therefore, on a thorough consideration of the matter, we hold that the benefit of additional quantum of pension as per Section 17B of the Act in the first slab would be available to be a retired judge from the first day of his 80th year. In so far petitioner is concerned, he would be entitled to the said benefit from 30-07-2015 which was the first day of his 80th year. Ordered accordingly.

33. Consequently, the writ petition is allowed but without any order as to cost.

JUDGE

JUDGE

Biplab

Comparing Assistant