

REPORTABLE
IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
WRIT PETITION(C) NO. 300 OF 2016

K. Sreedhar Rao

..Petitioner

Versus

Union of India through Secretary,
Ministry of Law & Justice, New Delhi

..Respondent

J U D G M E N T

M.R. SHAH, J.

By way of this petition filed under Article 32 of the Constitution of India, the petitioner, who retired as Acting Chief Justice of the Gauhati High Court, has prayed for an appropriate writ, direction or order and declaration that the petitioner is entitled to pensionary benefits, applicable to a retired Chief Justice of a High Court.

2. That the petitioner joined services as a member of the Karnataka Judicial Service in the year 1988. He was elevated to the High Court of Karnataka in the year 2000. Thereafter, he was transferred to the Gauhati High Court as a puisne Judge. That on 13.08.2014, in exercise of powers under Article 223 of

the Constitution of India, the petitioner was appointed as the Acting Chief Justice of the Gauhati High Court. He served in that capacity for 14 months and retired as Acting Chief Justice on 20.10.2015. While serving as Acting Chief Justice, the petitioner was paid his salaries and allowances admissible to a Chief Justice, as contemplated in the Second Schedule, Part-D, paragraphs 10 and 11 of the Constitution of India and under the High Court Judges (Salaries and Conditions of Service) Act, 1954 (hereinafter referred to as the '1954 Act').

2.1 That on 20.07.2015, when the petitioner was holding the post of Acting Chief Justice, the Registry of the Gauhati High Court sent the required documents for fixation of the petitioner's pension and gratuity to the Central Government. The petitioner claimed the pensionary benefits as may be available to the Chief Justice. However, the Department of Law & Justice informed the High Court that the petitioner is not entitled to the higher pension ceiling of Rs.5,40,000/- being the pension available to a Chief Justice and therefore requested to furnish the revised pension report fixing the pension at Rs.4,80,000/- annually. The Registry of the High Court wrote to the Department of Law & Justice that vide Rule 7 of Part-I of the First Schedule to the

1954 Act, the petitioner was entitled to pension admissible to the Chief Justice. At this stage, it is required to be noted that initially the petitioner elected to seek pension under Part-III of the First Schedule to the 1954 Act. However, it is the case on behalf of the petitioner that subsequently he clarified that he is seeking pension under Part-I of the First Schedule to the 1954 Act. The aforesaid shall be dealt with hereinbelow.

2.2 That thereafter the Ministry of Law & Justice, Government of India rejected the contention of the High Court that the petitioner was entitled to receive his pension as a Chief Justice, the petitioner has preferred the present petition under Article 32 of the Constitution of India for an appropriate writ, direction or order and declaration that the petitioner is entitled to the pensionary benefits as that of the Chief Justice.

3. Shri Kailash Vasdev, learned Senior Advocate appearing on behalf of the petitioner has vehemently submitted that as per para 10 of Part D of the Second Schedule of the Constitution of India, there shall be paid to the Judges of the High Courts, in respect of time spent on actual service, salary at the rates mentioned therein. It is submitted that as per para 11 of Part D of the Second Schedule of the Constitution of India, the

expression “Chief Justice” includes an Acting Chief Justice. It is submitted that therefore Part D of the Second Schedule of the Constitution of India, in the matter of pay and perks, equates the Acting Chief Justice with the Chief Justice.

3.1 It is further submitted by Shri Kailash Vasdev, learned Senior Advocate appearing on behalf of the petitioner that as per Section 2(1)(a) of the 1954 Act, “Acting Chief Justice” means a Judge appointed under Article 223 of the Constitution to perform the duties of the Chief Justice. It is submitted that as per Section 2(1)(g) of the 1954 Act, “Judge” means a Judge of a High Court and includes the Chief Justice, Acting Chief Justice, an additional Judge and Acting Judge of the High Court.

3.2 It is further submitted by Shri Kailash Vasdev, learned Senior Advocate appearing on behalf of the petitioner that as per Rule 2 of Part I of the First Schedule of the 1954 Act, the pension payable to a Judge to whom Part I applies for pension shall be for service as Chief Justice in any High Court – Rs.1,21,575/- per annum for each completed year of service and the pension payable to a Chief Justice shall in no case exceed Rs.15,00,000/- per annum. It is submitted that as per Rule 7 of Part I of the First Schedule of the 1954 Act, for the purposes of Part I, service

as an Acting Chief Justice of a High Court shall be treated as though it were service rendered as Chief Justice of a High Court. It is submitted that therefore the petitioner who retired as an Acting Chief Justice shall be entitled to all pensionary benefits as may be available to a retired Chief Justice including the maximum limit of Rs.15,00,000/- per annum in the case of a Chief Justice.

3.3 Learned Senior Advocate appearing on behalf of the petitioner has submitted that in fact the respondent rejected the claim of the petitioner considering his application under Part III of the First Schedule of the 1954 Act. It is submitted that in fact subsequently the petitioner claimed the pension/pensionary benefits under Part I of the First Schedule of the 1954 Act, and therefore, his case is required to be considered under Part I of the First Schedule of the 1954 Act.

3.4 Now so far as the reliance placed upon the decision of this Court in the case of *Union of India v. Syad Sarwar Ali (1998) 9 SCC 426* by the respondent is concerned, it is vehemently submitted by the learned Senior Advocate appearing on behalf of the petitioner that the said decision shall not be applicable at all to the facts of the case on hand. It is submitted that the facts in

the said case are distinguishable. It is submitted that the said judgment deals with a fact situation where the respondent discharged his duties as Acting Chief Justice during his tenure as a Judge and as such he retired as a Judge and not as an Acting Chief Justice. It is submitted that observations of this Court in para 9 of the aforesaid judgment are *obiter dicta*. It is submitted that therefore the decision in the case of *Syad Sarwar Ali(supra)* has no application to the facts of the case on hand.

3.5 It is further submitted by Shri Kailash Vasdev, learned Senior Advocate appearing on behalf of the petitioner that para 11 of Part D of the Second Schedule of the Constitution of India specifically provides the expression “Chief Justice” includes an Acting Chief Justice. It is submitted that Rule 7 of Part I of the First Schedule of the 1954 Act reiterates that “for the purposes of this Part, service as an Acting Chief Justice of a High Court shall be treated as though it were service rendered as Chief Justice of a High Court”. It is submitted that the Acting Chief Justice discharges the same duties, obligations and functions as the Chief Justice. It is submitted therefore that the petitioner, who retired as an Acting Chief Justice, for all practical purposes,

retired as a Chief Justice and therefore he is entitled to the pensionary benefits as may be available to the Chief Justice.

3.6 It is further submitted by Shri Kailash Vasdev, learned Senior Advocate appearing on behalf of the petitioner that as such Part III of the First Schedule of the 1954 Act shall not be applied to a Judge who retires as an Acting Chief Justice. It is submitted that Part III of the First Schedule of the 1954 Act applies to a Judge who has held any pensionable post under the Union or a State and who has not elected to receive the pension payable under Part I. It is submitted that Part III deals with pension payable to such a Judge and it does not deal with pension payable to a Judge who retires as an Acting Chief Justice.

3.7 It is further submitted by Shri Kailash Vasdev, learned Senior Advocate appearing on behalf of the petitioner that Section 14 of the 1954 Act provides that “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”. It is submitted that Rule 7 of the First Schedule equates the service of an Acting Chief Justice as service rendered as a Chief Justice of the High Court for the purposes of Part I. It

is submitted that therefore when on the date of retirement the petitioner retired as an Acting Chief Justice after rendering service as an Acting Chief Justice for 14 months, the petitioner shall be entitled to the pensionary benefits which may be available to a Chief Justice.

3.8 Making the above submissions, it is prayed to allow the present petition.

4. The present petition is vehemently opposed by Ms. V. Mohana, learned Senior Advocate appearing on behalf of the respondent. It is vehemently submitted that the petitioner being a promotee Judge and retired as an Acting Chief Justice from the High Court, Part III of the First Schedule of the 1954 Act only shall be applicable. It is submitted that even otherwise as such the petitioner submitted the application for pension under Part III only and therefore his application was processed under Part III only. It is submitted that only before this Court subsequently as an afterthought the petitioner is claiming the pension/pensionary benefits under Part I. It is submitted that as there was no upper limit so far as the pension payable under Part III is concerned, the petitioner applied for pension under Part III only.

4.1 It is further submitted by Ms. V. Mohana, learned Senior Advocate appearing on behalf of the respondent that para 11 of Part D of the Second Schedule of the Constitution read with Article 221 shows that the said provisions prescribe entitlement of salaries alone of a Judge/Chief Justice of a High Court and the same is made applicable to an ad-hoc or an Acting Judge/Chief Justice of the High Court. It is submitted that therefore an Acting Chief Justice of a High Court is equated to a Chief Justice for the limited purpose of salary only and not otherwise.

4.2 It is further submitted by Ms. V. Mohana, learned Senior Advocate appearing on behalf of the respondent that by virtue of the 1954 Act, it is for the limited purpose of computation of salary that the Acting Chief Justice is treated as Chief Justice.

4.3 It is further submitted by Ms. V. Mohana, learned Senior Advocate appearing on behalf of the respondent that Rule 7 of Part I of the First Schedule of the 1954 Act is required to be read with Rule 2 of Part I. It is submitted that Rule 7 of Part I also speaks about computation and not grant of equal pension.

4.4 It is further submitted by Ms. V. Mohana, learned Senior Advocate appearing on behalf of the respondent that Rule 7 of Part I of the First Schedule of the 1954 Act when read with Rule

2 of Part I, it can be seen what is contemplated in Part I is only computation as far as the position held by them during a particular year either as a Judge/Acting Chief Justice/Chief Justice. It is submitted that in any event, Rule 7 only counts the length of service of a Judge being ad-hoc Judge under Article 127 of the Constitution or one under Article 223 of the Constitution. It is submitted that therefore the prayer of the petitioner for pension as Chief Justice is not sustainable and the petitioner is not entitled to pensionary benefits applicable to a retired Chief Justice of the High Court and is not eligible for consideration to the all statutory posts and assignments for which a retired Chief Justice is eligible.

4.5 It is further submitted by Ms. V. Mohana, learned Senior Advocate appearing on behalf of the respondent that the Acting Chief Justice of a High Court, who is one appointed under Article 223 of the Constitution of India, may not be equated with the Chief Justice of the High Court who is appointed under Article 217 of the Constitution of India. It is submitted that in the case of *Syad Sarwar Ali (supra)*, this Court had categorically held that the Acting Chief Justice is different from Chief Justice. Relying upon paragraphs 10 and 11 of the aforesaid decision, it is

submitted by the learned Senior Advocate that an Acting Chief Justice who is one appointed under Article 223 of the Constitution of India may not be equated with a Chief Justice appointed under Article 217 of the Constitution of India.

4.6 It is further submitted by Ms. V. Mohana, learned Senior Advocate appearing on behalf of the respondent that there is a clear distinction between a Chief Justice appointed under Article 217 of the Constitution of India and Acting Chief Justice appointed under Article 223 of the Constitution of India. It is submitted that when an Acting Chief Justice is appointed, the office of the Chief Justice remains vacant. It is submitted that under Article 223 of the Constitution, an Acting Chief Justice is merely appointed by the President to perform the functions of the Chief Justice while the office of the Chief Justice remains vacant. It is submitted that Schedule 3 Para VIII of the Constitution of India provides for an oath for the Chief Justice and other Judges, but not for an Acting Chief Justice. It is submitted that Acting Chief Justice never takes the oath of office. It is submitted that any puisne Judge can be appointed as Acting Chief Justice. It is submitted therefore that there is a material distinction between the Chief Justice appointed under Article 217 of the Constitution

and an Acting Chief Justice appointed under Article 223 of the Constitution. It is submitted that only during the period a Judge is appointed and functioning as an Acting Chief Justice and considering para 11 of the Second Schedule of the Constitution read with Article 221 of the Constitution, such an Acting Chief Justice is entitled to the salaries of a Chief Justice of the High Court. It is submitted therefore that the petitioner shall not be entitled to the pensionary benefits as may be available to a retired Chief Justice and therefore is rightly denied the pension/pensionary benefits as may be available to a retired Chief Justice.

4.7 Making the above submissions, it is prayed to dismiss the present petition.

5. We have heard the learned counsel for the respective parties at length.

5.1 The short question which is posed for the consideration of this Court is, whether the petitioner who retired as an Acting Chief Justice is entitled to the pensionary benefits which may be available to a retired Chief Justice?

5.2 Section 14 of the 1954 Act provides for pension payable to Judges. It provides that subject to the provisions of the 1954

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. It further provides 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; or (c) his retirement is medically certified to be necessitated by ill-health. "Judge" is defined under Section 2(1)(g) of the 1954 Act. According to Section 2(1)(g) of the 1954 Act, "Judge" means a Judge of a High Court and includes the Chief Justice, an Acting Chief Justice, an additional Judge and an Acting Judge of the High Court.

5.3 Part I of the First Schedule of the 1954 Act shall apply to a Judge who has not held any other pensionable post under the Union or a State or a Judge who having held any other pensionable post under the Union or a State has elected to receive the pension payable under Part I. Part III of the First Schedule of the 1954 Act shall apply to a Judge who has held any pensionable post under the Union or a State and who has not elected to receive the pension payable under Part I. In the present case, as such, the petitioner was a promotee Judge and therefore Part III of the First Schedule may be applicable. It is

required to be noted that as such the petitioner applied for pension under Part III. However, it is the case on behalf of the petitioner that subsequently having realised the mistake he had applied for pension under Part I of the First Schedule of the 1954 Act. Without entering into the question, whether the petitioner can be permitted to subsequently switch over to Part I of the First Schedule of the 1954 Act, we shall consider the case of the petitioner as if he had applied for pension under Part I of the First Schedule.

6. Rule 2 of Part I of the First Schedule of the 1954 Act provides that subject to the other provisions of Part I, the pension payable to a Judge to whom Part I applies, pension shall be (a) for service as Chief Justice in any High Court – Rs.1,21,575/- per annum for each completed years of service; (b) for service as any other Judge in any High Court – Rs. 96,524/- per annum for each completed years of service. It further provides that the pension under this paragraph shall in no case exceed Rs.15,00,000/- per annum in the case of a Chief Justice and Rs.13,50,000/- per annum in the case of any other Judge.

6.1 Rule 7 of Part I of the First Schedule of the 1954 Act, upon which much reliance has been placed by the learned Senior

Advocate appearing on behalf of the petitioner, provides that for the purposes of Part I, service as an Acting Chief Justice of a High Court shall be treated as though it were service rendered as Chief Justice of a High Court. Therefore, for the purpose of computation of the pension as per Rule 2, the service rendered by a Judge as an Acting Chief Justice shall be treated as a service rendered as Chief Justice, i.e., Rs.1,21,575/- per annum. For example, like in the present case, for the services rendered by the petitioner as Acting Chief Justice for 14 months, while computing the pension for that 14 months, his pension shall be counted as Chief Justice, i.e., Rs.1,21,575/- per annum and for rest of the completed years of service his pension is to be computed as Judge of the High Court. Rules 2 and 7 of Part I of the First Schedule of the 1954 Act read as under:

“2. Subject to the other provisions of this Part, the pension payable to a Judge to whom this Part applies for pension shall be, —

(a) for service as Chief Justice in any High Court, Rs.1,21,575/- per annum for each completed year of service;

(b) for service as any other Judge in any High Court, Rs.96,524/- per annum for each completed year of service:

provided that the pension under this paragraph shall in no case exceed Rs.15,00,000/- per annum in the

case of a Chief Justice and Rs.13,50,000/- per annum in the case of any other Judge.

7. For the purposes of this Part, service as an acting Chief Justice of a High Court or as an ad hoc Judge of the Supreme Court, shall be treated as though it were service rendered as Chief Justice of a High Court,

Provided that nothing in this paragraph shall apply—

(a) to an additional Judge or acting Judge; or

(b) to a Judge who 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 Union or a State.”

6.2 Now so far as the reliance placed upon para 11 Part D of the Second Schedule of the Constitution and Articles 127, 221 and 223 of the Constitution by the learned Senior Advocate appearing on behalf of the petitioner is concerned, on conjoint reading of the aforesaid provisions, we are of the opinion that so long as a Judge who is performing his duties as an Acting Chief Justice appointed under Article 223 of the Constitution, shall be entitled to the salary and other perks as that of the Chief Justice. Meaning thereby, what is contemplated by the aforesaid provisions is only payment of salary during the tenure while functioning as Acting Chief Justice as that of a Chief Justice. Even by virtue of the provisions of the 1954 Act, it is for the

limited purpose for computation of the salary that Acting Chief Justice is treated as Chief Justice.

6.3 Now so far as the submission on behalf of the petitioner, relying upon para 11 Part D of the Second Schedule that the “Chief Justice” includes an “Acting Chief Justice” and that such a Judge who is functioning as an Acting Chief Justice be paid the salary of a Chief Justice and for all practical purposes he has performed the duties of a Chief Justice and therefore he shall be paid the pensionary benefits admissible to a retired Chief Justice is concerned, it is required to be noted that there is a clear distinction between a Judge appointed as an Acting Chief Justice under Article 223 of the Constitution of India and a Chief Justice appointed under Article 217 of the Constitution. Considering Article 223 of the Constitution of India, it can be seen that a Judge of the High Court is appointed as an Acting Chief Justice under Article 223 of the Constitution for the purposes of the duties of the Chief Justice and the office of the Chief Justice remains vacant. In a case where the office of the Chief Justice of the High Court is vacant, the duties of the office of the Chief Justice will be performed by any other Judge as Acting Chief

Justice. Therefore, only for the limited purpose of salary, such an Acting Chief Justice is treated at par with the Chief Justice and not for any other purpose, more particularly the pension. For the purposes of pension, the relevant provisions of the 1954 Act are extracted hereinabove and as observed hereinabove while computing the pension as per Rule 2 of Part I of the First Schedule of the 1954 Act, the service rendered by a Judge as an Acting Chief Justice only is required to be counted as a Chief Justice and his pension is required to be computed accordingly as a Chief Justice for the service rendered as an Acting Chief Justice. Therefore, the services rendered by the petitioner as an Acting Chief Justice, i.e., for a period of 14 months, is to be counted/calculated as that of the Chief Justice, namely, Rs.1,21,575/- per annum, or as the case may be. Rule 7 of Part I of the First Schedule cannot be read in isolation. Even Rule 7 specifically provides that for the purposes of this part – Part I, service as an Acting Chief Justice of a High Court shall be treated as though it were service rendered as Chief Justice of a High Court. Rule 2 and Rule 7 of Part I of the First Schedule of the 1954 Act are required to be read conjointly and if are read conjointly, in that case, while making the computation of pension

under Rule 2 of Part I of the First Schedule, the service rendered as an Acting Chief Justice is required to be considered as a Chief Justice and accordingly his pension is required to be counted and for that period his pension is required to be computed as if he has rendered service as Chief Justice.

7. Now so far as the reliance placed upon the decision of this Court in the case of *Syad Sarwar Ali(supra)* by the learned counsel appearing on behalf of the respondent is concerned, learned counsel appearing on behalf of the petitioner is right to some extent that the said decision is distinguishable on facts. It is true that in the said case, the respondent – Judge retired as a puisne Judge and not as an Acting Chief Justice. However, in the said decision, it is specifically observed that the substantive portion of Rule 2 read with Rule 7 of the First Schedule deals with the calculation of the pension payable to a Judge during his judicial career and that in computing the pension, the time which he had spent as a Judge or Acting Chief Justice or Chief Justice is taken into consideration. It is further observed by this Court in the aforesaid decision that the rules containing First Schedule are conscious of the fact that the retiring incumbent may be a

Judge or a Chief Justice or may have acted as an Acting Chief Justice for a period of time where for the purpose of calculating the quantum of pension, the period spent by a Judge as an Acting Chief Justice is taken into consideration for the purpose of fixing the ceiling. It is further observed that however, an Acting Chief Justice, who is one appointed under Article 223 of the Constitution is not equated with the Chief Justice appointed under Article 217 of the Constitution. The above observations clinch the issue. Even otherwise, we have considered the question posed independently and are of the opinion that the petitioner is not entitled to the pensionary benefits including the ceiling in the pension which may be available to a retired Chief Justice and as observed hereinabove, only that period of service rendered by him as an Acting Chief Justice, i.e., 14 months service as an Acting Chief Justice is required to be considered as service rendered as a Chief Justice for the purpose of computation of pension under Rule 2/as per Rule 2 of the Part I of the First Schedule of the 1954 Act.

8. In view of the above and for the reasons stated above, the petitioner is not entitled to the relief and the declaration as

prayed. The petitioner is not entitled to the pensionary benefits including the ceiling in the pension as may be available to a retired Chief Justice. The instant petition fails and the same deserves to be dismissed and is accordingly dismissed.

.....J.
[ARUN MISHRA]

.....J.
[M.R. SHAH]

NEW DELHI;
SEPTEMBER 06, 2019.

.....J.
[B.R. GAVAI]