



**IN THE SUPREME COURT OF INDIA
INHERENT/ORIGINAL JURISDICTION**

SUO MOTU WRIT PETITION (C) NO. 4 OF 2024

**IN RE: REFIXATION OF PENSION CONSIDERING
SERVICE PERIOD IN DISTRICT JUDICIARY AND
HIGH COURT**

WITH

WRIT PETITION (C) NO. 993 OF 2017

WRIT PETITION (C) NO. 1048 OF 2017

WRIT PETITION (C) NO. 548 OF 2018

WRIT PETITION (C) NO. 911 OF 2018

WRIT PETITION (C) NO. 86 OF 2019

WRIT PETITION (C) NO. 1542 OF 2019

WRIT PETITION (C) NO. 660 OF 2023

WRIT PETITION (C) NO. 102 OF 2024

WRIT PETITION (C) NO. _____ OF 2025

DIARY NO. 25226 OF 2024

INDEX

I. INTRODUCTION AND A BRIEF OVERVIEW OF THE ISSUES.....	3
II. LEGAL PROVISIONS	8
<i>a. Article 221 of the Constitution of India</i>	<i>8</i>
<i>b. High Court Judges (Salaries and Conditions of Service) Act, 1954.....</i>	<i>9</i>
<i>i. Section 2.....</i>	<i>9</i>
<i>ii. Section 13A</i>	<i>11</i>
<i>iii. Section 14.....</i>	<i>11</i>
<i>iv. Section 15.....</i>	<i>13</i>
<i>v. Section 17A</i>	<i>15</i>
<i>vi. First Schedule – Part I and Part III</i>	<i>19</i>
III. JUDICIAL PRECEDENTS.....	22
<i>a. M.L. Jain and Another v. Union of India [M L Jain (I)]</i>	<i>23</i>
<i>b. M.L. Jain v. Union of India [M L Jain (II)].....</i>	<i>24</i>
<i>c. Kuldip Singh v. Union of India.....</i>	<i>26</i>
<i>d. P. Ramakrishnam Raju v. Union of India and Others.....</i>	<i>29</i>
<i>e. Union of India, Ministry of Law & Justice v. Justice (Retd) Raj Rahul Garg (Raj Rani Jain) and Others.....</i>	<i>35</i>
<i>f. Jagdish Chandra Gupta v. Union of India and Others</i>	<i>39</i>
<i>g. Justice Shailendra Singh and Others v. Union of India and Others.....</i>	<i>41</i>
IV. DISCUSSION AND ANALYSIS.....	45
<i>a. Non-consideration of services rendered as District Judges for payment of Full Pension.....</i>	<i>48</i>
<i>b. Denial of Full Pension owing to break-in-service</i>	<i>52</i>
<i>c. Denial of Full Pension to Retired High Court Judges who enter the State Judiciary after NPS came into effect.....</i>	<i>53</i>
<i>d. Denial of Full Pension to Judges who retired as Additional Judges.....</i>	<i>55</i>
<i>e. Denial of Family Pension and Gratuity to widows/family members of Additional Judges of High Court.....</i>	<i>56</i>
<i>f. Denial of Provident Fund as payable under the HCJ Act....</i>	<i>58</i>
V. CONCLUSION	59

J U D G M E N T

B.R. GAVAI, CJI

I. INTRODUCTION AND A BRIEF OVERVIEW OF THE ISSUES

1. This batch of matters concerns various issues with regard to pension payable to retired Judges of the High Courts including the payment of gratuity and other terminal benefits.

2. Various matters concern different issues. In some of the matters, more than one issue is involved. Therefore, for the sake of clarity, we propose to identify the various issues involved in different matters.

3. The first issue, that is involved in the following matters, pertains to non-grant of full pension to the petitioners who have retired as High Court Judges without taking into consideration the services rendered by them as District Judges:

- (i) ***In Re Refixation of Pension Considering Service Period in District Judiciary and High Court [SMW(C) No.4/2024];***
- (ii) ***Justice M Vijayaraghavan v. Union of India [WP(C) No.993/2017];***

- (iii) ***Justice Malai Subramaniam v. Union of India [WP(C) No.1048/2017;***
- (iv) ***Justice Alok Kumar Mukherjee v. Union of India [WP(C) No.911/2018];***
- (v) ***Justice Surendra Kumar v. Union of India [WP(C) No.86/2019;***
- (vi) ***Justice Het Singh v. Union of India [WP(C) No.1542/2019]; and***
- (vii) ***Justice Ajit Singh v. Union of India [WP(C) No.102/2024]***

4. The second issue, that is involved in the following matters, is with regard to denial of full pension on the ground of break-in service for a period between the date on which they retired as District Judges and the date on which they assumed the charge as High Court Judges:

- (i) ***In Re Refixation of Pension Considering Service Period in District Judiciary and High Court [SMW(C) No.4/2024];***
- (ii) ***Justice M Vijayaraghavan v. Union of India [WP(C) No.993/2017];***
- (iii) ***Justice Alok Kumar Mukherjee v. Union of India [WP(C) No.911/2018]; and***
- (iv) ***Justice Surendra Kumar v. Union of India [WP(C) No.86/2019;***

5. The third issue which arises in the case of ***Justice Ajit Singh v. Union of India* [WP (C) No. 102/2024]** is as to whether the petitioner who retired as a High Court Judge but entered into the State Judiciary after the New Pension Scheme (NPS) came into effect would be entitled to pension as per the High Court Judges (Salaries and Conditions of Service) Act, 1954¹ or not.

6. The fourth issue, that is involved in the following cases, is as to whether a Judge who has retired as an Additional Judge of the High Court would be entitled to full pension or not:

- (i) ***In Re Refixation of Pension Considering Service Period in District Judiciary and High Court* [SMW(C) No.4/2024];**
- (ii) ***Elavarasi Veeraraghavan (Dead) Thr. LRs. v. Union of India* [WP(C) No.548/2018]; and**
- (iii) ***Justice Surendra Kumar v. Union of India* [WP(C) No.86/2019];**

7. The fifth issue which arises in the case of ***Elavarasi Veeraraghavan (Dead) Thr. LRs. v. Union of India* [WP(C) No. 548/2018]** is as to whether the petitioner therein who is

¹ Hereinafter “HCJ Act”.

the widow of an Additional Judge of the High Court would be entitled to gratuity and family pension or not. The petitioner therein has been denied gratuity on the ground that her husband did not complete the qualifying service of 2 years and 6 months as required under Section 17A of the HCJ Act. She has also been denied the family pension on the ground that her husband died as an Additional Judge of the High Court.

8. The sixth issue, involved in the following cases, concerns the denial of provident fund as payable under Section 20 of the HCJ Act on the ground that they were appointed after NPS came into effect:

- (i) ***Justice Vikas Kunwar Srivastav v. Union of India [WP(C) No.660/2023];***
- (ii) ***Justice Rajendra Kumar v. Union of India [Diary No.25226/2024]; and***
- (iii) ***Justice Ajit Singh v. Union of India [WP(C) No.102/2024]***

9. We have heard Shri K. Parameshwar, learned *Amicus Curiae* and Shri R. Venkatramani, learned Attorney General for India appearing for the Union of India. We have also heard Shri S. Nagamuthu, Shri Manoj Goel, Shri S.B.

Upadhyaya, Shri Sudhir Kumar Saxena, Shri Prem Prakash, learned Senior Counsel/learned counsel appearing on behalf of different parties.

10. At the outset, we must state that the learned Attorney General appearing on behalf of the Union of India fairly submitted that various issues involved in the present matter have already been decided by the judgment and order of this Court in the cases of ***Union of India, Ministry of Law & Justice v. Justice (Retd) Raj Rahul Garg (Raj Rani Jain) and Others*** [Civil Appeal No. 4272 of 2024]², ***Justice Shailendra Singh and Others v. Union of India and Others*** [WP(C) No. 232 of 2023 and WP(C) No. 3 of 2024]³ and ***Jagdish Chandra Gupta v. Union of India and Others***⁴ [WP(C) No. 1262 of 2021]. We find that, insofar as the issue of payment of pension to the retired Judges of the High Court is concerned, it is largely covered by this Court in the aforesaid judgments. However, we find that in order to put to rest all controversies with regard to the said subject, some ironing out of the creases is required to be done.

² 2024 SCC OnLine SC 321 : 2024 INSC 219

³ 2024 SCC OnLine SC 3207 : 2024 INSC 862

⁴ 2024 SCC OnLine SC 3207 : 2024 INSC 862

11. We further find that insofar as the issue of payment of pension to the Judges of the High Court who entered into the District Judiciary after the NPS came into effect so also the issue with regard to payment of gratuity and family pension to the widow or family members of the deceased Judges of the High Court are required to be considered by this Court.

II. LEGAL PROVISIONS

a. Article 221 of the Constitution of India

12. It will be relevant to refer to Article 221 of the Constitution of India, which reads thus:

“221. Salaries etc., of Judges.—(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, 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.”

13. Article 221 of the Constitution of India provides that each of the Judges of the High Court shall be paid such

salaries as may be determined by Parliament by law. It further provides that, until such a law is enacted, such salaries would be paid as specified in the Second Schedule of the Constitution. Clause 2 of Article 221 provides that 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. It further provides that, until such a law is enacted, the same shall be paid in accordance with specifications made in the Second Schedule of the Constitution. The *proviso* thereto provides 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.

b. High Court Judges (Salaries and Conditions of Service) Act, 1954

i. Section 2

14. In exercise of the provisions of Article 221 of the Constitution, the Parliament has enacted the HCJ Act on 20th May, 1954. The Preamble of the HCJ Act states that it is *an Act to regulate salaries and conditions of service of Judges of High Courts*. It will be relevant to refer to clauses (g) and (gg)

of sub-section (1) of Section 2 of the HCJ Act, which read thus:

“2. Definitions.-

1.

.....

(g) “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;

(gg) “pension” means a pension of any kind whatsoever payable to or in respect of a Judge, and includes any gratuity or other sum or sums so payable by way of death or retirement benefits;”

15. Upon a perusal of the definition of a “Judge” as provided in clause (g) of sub-section (1) of Section 2 of the HCJ Act, it is clear that the definition of a “Judge” is *wide* and it includes in its scope and ambit the Chief Justice, an Acting Chief Justice, an additional Judge and also an acting Judge of the High Court.

16. Clause (gg) of sub-section (1) of Section 2 of the HCJ Act which defines “pension” provides that pension means a pension of any kind whatsoever payable to or in respect of a Judge and includes any gratuity or other sum or sums so payable by way of death or retirement benefits.

ii. Section 13A

17. It will also be relevant to refer to Section 13A of the HCJ Act, which reads thus:

“13A. Salaries of the Judges.—(1) There shall be paid to the Chief Justice of a High Court, by way of salary, two lakh fifty thousand rupees per mensem.

(2) There shall be paid to a Judge of a High Court, by way of salary, two lakh twenty-five thousand rupees per mensem].”

18. Section 13A of the HCJ Act provides that the salary that shall be paid to the Chief Justice of the High Court would be Rs.2,50,000/- per month. Sub-section (2) thereof provides that the salary of a Judge of the High Court would be Rs.2,25,000/- per month.

iii. Section 14

19. It will also be relevant to refer to Section 14 of the HCJ Act, which reads thus:

“14. Pension payable to Judges.—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; or

(c) his retirement is medically certified to be necessitated by ill-health:

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.

Explanation.—In this section “Judge” means a Judge who has not held any other pensionable post under the Union or a State and includes 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 of the First Schedule.”

20. It can thus be seen that a Judge, on his retirement, is required to be paid a pension in accordance with the scale and provisions in Part I of the First Schedule of the HCJ Act. However, *proviso* thereto provides that no such pension shall be payable to a Judge unless he has completed not less than twelve years of service for pension; or he has attained the age of sixty-two years; or his retirement is medically certified to be necessitated by ill-health. The second *proviso* thereto provides 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 the HCJ Act shall be in lieu

of, and not in addition to, that pension. The explanation thereto provides that, under the said provision, a “Judge” means a Judge who has not held any other pensionable post under the Union or a State and includes 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 of the First Schedule.

iv. Section 15

21. It will also be apposite to refer to Section 15 of the HCJ Act, which reads thus:

“15. Special provision for pension in respect of Judges who are members of service.— (1) Every Judge—

(a) * * *

(b) who has held any other pensionable 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, Part III of the First Schedule, and the pension payable to him shall be calculated accordingly.

(2) Notwithstanding anything contained in sub-section (1), any Judge to whom that sub-section applies and who is in service on or after the 1st day of October, 1974, may, if he has elected under the proviso to that sub-section to receive the pension

payable to him under Part III of the First Schedule before the date on which the High Court Judges (Conditions of Service) Amendment Act, 1976, receives the assent of the President, cancel such election and elect afresh to receive the pension payable to him under Part I of the First Schedule and any such Judge who dies before the date of such assent shall be deemed to have elected afresh to be governed by the provisions of the said Part I if the provisions of that Part are more favourable in his case.”

22. It can thus be seen that clause (b) of sub-section (1) of Section 15 of the HCJ Act provides that every Judge, who has held any other pensionable 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 of the HCJ Act. The *proviso* thereto provides that every such Judge shall elect to receive the pension payable to him either under Part I of the First Schedule or, Part III of the First Schedule, and the pension payable to him shall be calculated accordingly. Sub-section (2) thereof provides that notwithstanding anything contained in sub-section (1), any Judge to whom that sub-section applies and who is in service on or after the first day of October, 1974, may, if he has elected under the *proviso* to that sub-section to receive the pension payable to him under Part III of the

First Schedule before the date on which the High Court Judges (Conditions of Service) Amendment Act, 1976, receives the assent of the President, cancel such election and elect afresh to receive the pension payable to him under Part I of the First Schedule. It further provides that any such Judge who dies before the date of such assent shall be deemed to have elected afresh to be governed by the provisions of the said Part I if the provisions of that Part are more favourable in his case. It is to be noted that subsection (2) of Section 15 of the HCJ Act was inserted by Amendment Act 35 of 1976 with effect from 1st October 1974.

v. Section 17A

23. It will also be relevant to refer to Section 17A of the HCJ Act, which reads thus:

“17A. Family pensions and gratuities.— (1) Where a Judge who, being in service on or after the commencement of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, dies, whether before or after retirement in circumstances to which Section 17 does not apply, family pension calculated at the rate of fifty per cent of his salary on the date of his death shall be payable to the person or persons entitled thereto and the amount so payable shall be paid from the day following the date of death of the Judge for a period of seven years or for a period up to the date

on which the Judge would have attained the age of sixty-five years, had he survived, whichever is earlier, and thereafter at the rate of thirty per cent of his salary:

Provided that in no case the amount of family pension calculated under this sub-section shall exceed the pension payable to the Judge under this Act.

Explanation.—For the purposes of determining the person or persons entitled to family pension under this sub-section,—

(i) in relation to a Judge who elects or is eligible to receive pension under Part I of the First Schedule, the rules, notifications and orders for the time being in force with regard to the person or persons entitled to family pension in relation to an officer of the Central Civil Services, Group ‘A’, shall apply;

(ii) in relation to a Judge who elects to receive pension under Part III of the First Schedule, the ordinary rules of his service if he had not been appointed a Judge with respect to the person or persons entitled to family pension shall apply and his service as a Judge being treated as service therein.

(2) Where any Judge, who has elected to receive the pension payable to him under Part III of the First Schedule, retires, or dies in circumstances to which Section 17 does not apply, gratuity, if any, shall be payable to the person or persons entitled thereto 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 gratuity.

(3) The rules, notifications and orders for the time being in force with respect to the grant of death-*cum*-retirement gratuity benefit to or in relation to an officer of the Central Civil Services, Class I

(including the provisions relating to deductions from pension for the purpose) shall apply to or in relation to the grant of death-*cum*-retirement gratuity benefit to or in relation to a Judge who, being in service on or after the 1st day of October, 1974, retires, or dies in circumstances to which Section 17 does not apply, subject to the modifications that—

(i) the minimum qualifying service for the purpose of entitlement to the gratuity shall be two years and six months;

(ii) the amount of gratuity shall be calculated on the basis of ten days' salary for each completed six months period of service as a Judge;

* * *

Explanation.—In sub-section (3), the expression “Judge” has same meaning as in Section 14”

24. It can thus be seen that sub-section (1) of Section 17A of the HCJ Act provides that where a Judge who, being in service on or after the commencement of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, dies, whether before or after retirement in circumstances to which Section 17 does not apply, family pension calculated at the rate of fifty per cent of his salary on the date of his death shall be payable to the person or persons entitled thereto. It further provides that the amount so payable shall be paid from the day following the date of death of the Judge for a period of seven years or for a period

up to the date on which the Judge would have attained the age of 65 years, had he survived, whichever is earlier. It further provides that thereafter such a family pension would be payable at the rate of thirty per cent of his salary. The *proviso* thereto provides that in no case the amount of family pension calculated under sub-section (1) of Section 17A shall exceed the pension payable to the Judge under the HCJ Act.

25. Sub-section (2) of Section 17A of the HCJ Act provides that where any Judge, who has elected to receive the pension payable to him under Part III of the First Schedule of the HCJ Act, retires, or dies in circumstances to which Section 17 of the HCJ Act does not apply, gratuity, if any, shall be payable to the person or persons entitled thereto under the ordinary rules of his service if he had not been appointed a Judge. It further provides that for the said purpose, his service as a Judge would be treated as service therein for the purpose of calculating such gratuity.

26. Clause (i) of sub-section (3) of Section 17A of the HCJ Act provides that the minimum qualifying service for the purpose of entitlement to the gratuity shall be 2 years and 6 months.

vi. First Schedule – Part I and Part III

27. Part I of the First Schedule to the HCJ Act reads thus:

“THE FIRST SCHEDULE

(See Sections 14 and 15)

Pensions of Judges

PART I

1. The provisions of this Part 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 this Part.

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.

* * * *

6. A Judge who has rendered service for pension both as Chief Justice and other Judge in any High Court may claim that any period of service of less than a completed year rendered by him as Chief Justice, or any portion of any such period, shall be treated for the purposes of paragraph 2 as service rendered by him as 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.”

28. Paragraph 1 of Part I of the First Schedule to the HCJ Act provides that the provisions of the said Part would 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 of the First Schedule. Paragraph 2 thereof provides that subject to the other provisions of the said Part, the pension payable to a Judge to whom this Part applies shall be, for service as Chief Justice in any High Court, Rs.1,21,575/- per annum for each completed year of service; and for service as any other Judge in any High Court shall be Rs.96,524/- per annum for each completed year of service. The *proviso* thereto provides that the pension under the said Paragraph shall in no case exceed Rs.15,00,000/- per annum in the case of a Chief Justice in any High Court and Rs.13,50,000/- per annum in the case of any other Judge in any High Court.

29. Part III of the First Schedule to the HCJ Act reads thus:

“THE FIRST SCHEDULE

(See Sections 14 and 15)

Pensions of Judges

PART III

1. The provisions of this Part apply to a Judge who has held any 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. 45,016 per annum in respect of each completed year of service for pension:

Provided that the pension under clause (a) and the additional pension under (b) together 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.”

30. A perusal of Paragraph 1 of Part III of the First Schedule to the HCJ Act would reveal that the provisions of the said Part 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. It, however, does not apply to a member of the Indian Civil Service. Clause (a)

of Paragraph 2 thereof provides that the pension payable to such a Judge shall be the pension to which he is entitled to under the ordinary rules of his service if he had not been appointed a Judge. Further, it provides that his service as a Judge would be treated as service therein for the purpose of calculating that pension. Clause (b) of Paragraph 2 thereof provides that a special additional pension of Rs.45,016/- per annum in respect of each completed year of service would be included in pension. The *proviso* thereto provides that the pension under clause (a) of Paragraph 2 and the additional pension under clause (b) of Paragraph 2 together 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.

III. JUDICIAL PRECEDENTS

31. The issues outlined by us in the earlier part of the judgment with regard to pension and other terminal benefits as payable under the HCJ Act, have undergone judicial scrutiny by this Court on a number of occasions previously. It will, therefore, be appropriate to place reliance on the

judgments of this Court which are germane for consideration of the issues which arise in the present case.

a. M.L. Jain and Another v. Union of India [M L Jain (I)]

32. As early as 1985, this Court, in the case of ***M.L. Jain and Another v. Union of India***⁵, was considering the case of the Petitioner No. 1 therein who was a member of Rajasthan Judiciary from 31st September 1945 till 1st July 1975. During the said period, he was a District and Sessions Judge, from 9th November 1970 to 1st July 1975. Thereafter, he was elevated as a Judge of the High Court on 1st July 1975. He retired as a Judge of the High Court on 21st July 1984. His total period of service as a Judicial Officer, otherwise than as a Judge of the High Court was 29 years, 9 months and 1 day while his service as a Judge of the High Court was for a period of 9 years and 21 days. Upon his appointment as a Judge of the High Court, he opted for Part III of the First Schedule to the HCJ Act for the purpose of his pension. The calculation for payment of pension was made on the basis that had he continued as a District and Sessions Judge he would have retired on 31st July 1977. The calculations were

⁵ (1985) 2 SCC 355 : 1985 INSC 78 [hereinafter, “M L Jain (I)”]

made on the basis of Part II of a letter dated 19th September 1984 from the Ministry of Law, Justice and Company Affairs. In this background, it will be relevant to refer to the observations of this Court:

“4. We are of the opinion that para 2(ii) of the letter dated September 19, 1984 is a clear departure from para 2 clause (a) of Schedule I to the High Courts Judges (Conditions of Service) Act. Under clause (a) of para 2 of the Schedule I to the High Courts Judges’ (Conditions of Service) Act the retiring Judges entire service as a Judge has to be reckoned for the purpose of calculating his pension and for that purpose the last pay drawn by him has to be the pay drawn by him as a Judge of the High Court and not the pay that would have been drawn by him as a District Judge, had he not been appointed a High Court Judge.”

b. M.L. Jain v. Union of India [M L Jain (II)]

33. Petitioner No. 1 therein was required to approach this Court time and again for revision of his pension on account of certain amendments to the HCJ Act. This Court in another case titled as ***M.L. Jain v. Union of India***⁶, was considering the provision in clause (b) of Paragraph 2 of Part III of the First Schedule to the HCJ Act which imposes a ceiling of Rs.8,000/- per annum in respect of each completed year of service on special additional pension to which a Judge would

⁶ (1991) 1 SCC 644 : 1991 INSC 11 [hereinafter, “M L Jain (II)”]

be entitled to under the ordinary rule of his service. The then *proviso* which is analogous to the present *proviso* imposed a ceiling of Rs.48,000/- per annum in respect of a Judge. It was contended on behalf of the petitioner therein that once a ceiling limit was fixed as contained in the *proviso* to Paragraph 2 of Part III of First Schedule of HCJ Act, there was no further justification for the Paragraph 2(b) ceiling. Accepting the said contention, this Court observed thus:

“4.We find full force in the submission. The reasons which weighed with this Court on the earlier occasion for enhancing the petitioner's pension fully apply to the present aspect. The ceiling of Rs 8000, therefore, is not necessary to be imposed and if that is applied, a situation giving rise to the application of Article 14 of the Constitution does arise. In fact, the presence of the proviso clearly brings out the intention that no attempt (*sic*) is sought to be made between Judges recruited from the different sources for the matter of the ceiling on pension. We, therefore, modify the order of this Court fixing petitioner's pension at Rs 46,100 and require his pension to be fixed at Rs 48,000 per annum **by holding that the ceiling in paragraph 2(b) of Part III of the First Schedule is unsustainable under Article 14 of the Constitution and would not be operative.** We direct that petitioner's pension from November 1, 1986, shall be fixed at Rs 48,000 a year.”

[Emphasis supplied]

34. This Court further held Paragraph 2(b) of Part III of the First Schedule to the HCJ Act *ultra vires* and as such, all

cases to which the situation therein applied were to be revised by the Union of India without requiring representations or applications from the retired Judges concerned.

c. Kuldip Singh v. Union of India

35. Thereafter, one of the issues that came up for consideration before this Court was as to whether the Judges appointed from the Bar would be entitled to extra years of service for the purposes of pension. The issue arose since the pension was linked to the tenure of the Judge in the District Judiciary and the High Court or the Supreme Court thereafter. As a consequence a Judge elevated or appointed from the Bar either to the High Court or to the Supreme Court would receive a lower pension than a Judge elevated or appointed from the service. In the case of ***Kuldip Singh v. Union of India***⁷, a retired Judge of this Court had filed a writ petition seeking the addition of 10 years to his service for the purposes of pension. This was necessitated since the legal regime at the relevant time, i.e., Part I of the First Schedule of the Supreme Court Judges (Salary and

⁷ (2002) 9 SCC 218 : 2002 INSC 239

Conditions of Service) Act, 1958⁸ provided that a Supreme Court Judge would be entitled to pension as per Part I of the HCJ Act. The result was that the Judges appointed to this Court directly from the Bar did not receive equal pension as that of the Judges who came to this Court from the High Court.

36. In the said case, notice was issued on 29th April 2002. A perusal of the order dated 31st October 2002 in the said petition would show that the learned Attorney General for India assured this Court that an amendment to provide parity to Judges elevated from the Bar was to be introduced which would provide that 5 years will be added to the service of the Judge of this Court who was elevated from the Bar directly. This Court passed an order on 31st October 2002, which reads thus:

“Learned Attorney General submits that Bill for bringing about the necessary amendment in the rules has been tabled. According to the proposed Bill with regard to the calculation of the pension, 5 years will be added to the number of years, the Judge has served in the Supreme Court, where he has been appointed directly from the Bar, for the purpose of determining the amount of pension payable. Mr. Parekh contends and in our view rightly that it would be logical that instead of 5

⁸ Hereinafter “SCJ Act”.

years, the period to be added should be 10 years, inasmuch as same is the period prescribed by Article 124 (3) (b) for a lawyer to be eligible to be considered for appointment as a Judge of this Court. Ordinarily, no member of the Bar would be directly appointed as a Judge of this Court unless he has put in at least about 30 years of practice. This being so, giving credit of only 5 years seems to be insufficient. The learned Attorney General may kindly consider this aspect and take appropriate action.”

37. It can thus be seen that this Court found that ordinarily, no member of the Bar would be directly appointed as a Judge of this Court unless he has put in at least about 30 years of practice. As such, according to this Court, giving credit of only 5 years of additional service seemed to be insufficient; the learned Attorney General, therefore, was urged by this Court to consider this aspect and take appropriate action. The issue was resolved by carrying out an amendment to the SCJ Act by inserting Section 13A therein, which reads thus:

“13A. Benefit of added years of service.—Subject to the provisions of this Act, a period of ten years shall be added to the service of a Judge for the purposes of his pension, who qualified for appointment as such judge under sub-clause (b) of clause (3) of Article 124 of the Constitution.”

d. P. Ramakrishnam Raju v. Union of India and Others

38. After about 12 years, a similar issue in respect of the High Court Judges came up for consideration before this Court in the case of ***P. Ramakrishnam Raju v. Union of India and Others***⁹. The issue therein was with regard to discrimination of the pension payable to the Judges who were appointed from the service on the one hand and those who were appointed directly from the Bar on the other hand. The Judges who were elevated from the Bar were receiving far less pension inasmuch as the length of service of such Judges was ordinarily lesser. This Court, noticing the cases of ***Kuldip Singh*** (supra) and ***Government of NCT of Delhi and Others v. All India Young Lawyers Association (Registered) and Another***¹⁰ directed that for pensionary benefits, 10 years of practice as an advocate would be added as a qualifying service for Judges elevated from the Bar.

39. It will be relevant to refer to paragraphs 15 to 24 of the judgment in the case of ***P. Ramakrishnam Raju*** (supra), which read thus:

⁹ (2014) 12 SCC 1 : 2014 INSC 229

¹⁰ (2009) 14 SCC 49 : 2009 INSC 85

“15. Explanation (aa) appended to Article 217(2) of the Constitution of India envisages that:

“(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate;”

The Explanation thus treats the experience of an advocate at the Bar and the period of judicial office held by him on a par.

16. The Judges, who are appointed under Article 217(2)(a) being members of the judicial service, even if they serve as a Judge of the High Court for only one or two years, get full pension benefits because of the applicability of Rule 26-B or because of their earlier entry into judicial service. However, the Judges of the High Court, who are appointed from the Bar do not get similar benefit of full pension, which is arbitrary and discriminatory. Section 14 of the HCJ Act and Clause 2 of Part I of the First Schedule which governs the pension payable to Judges gives rise to unequal consequences. The existing scheme treats unequally the equals, which is violative of Articles 14 and 21 of the Constitution of India.

17. To remove the above discrimination, in the Chief Justices' Conference held on 5-4-2013 and 6-4-2013, it was, inter alia, resolved that, “for pensionary benefits, ten years' practice as an advocate be added as a qualifying service for Judges elevated from the Bar”. [Resolution 18(viii)] It fully supports the petitioner's submission.

18. The ratio of the decision cited by the respondent in *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 (three-Judge Bench, dt. 4-9-1991)] is not applicable because the reliefs prayed therein were

entirely different and also because it is per incuriam in view of the subsequent decisions of this Court of equal strength in *All India Judges Assn. (1) v. Union of India* [(1992) 1 SCC 119 : 1992 SCC (L&S) 9 : (1992) 19 ATC 42 (three-Judge Bench, dt. 13-11-1991)] and *All India Judges Assn. (2) v. Union of India* [(1993) 4 SCC 288 : 1994 SCC (L&S) 148 : (1993) 25 ATC 818 (three-Judge Bench, dt. 24-8-1993)] wherein the requirement of independence of the judiciary have been underlined as also two decisions cited above i.e. *Kuldip Singh v. Union of India*, (2002) 9 SCC 218 : 2002 SCC (L&S) 1063 (three-Judge Bench, dt. 29-4-2002)] and *All India Young Lawyers' Assn. [Govt. (NCT of Delhi) v. All India Young Lawyers' Assn.]*, (2009) 14 SCC 49 : (2010) 1 SCC (L&S) 312 (three-Judge Bench, dt. 29-1-2009)]

19. When persons who occupied the constitutional office of Judge, High Court retire, there should not be any discrimination with regard to the fixation of their pension. Irrespective of the source from where the Judges are drawn, they must be paid the same pension just as they have been paid same salaries and allowances and perks as serving Judges. Only practising advocates who have attained eminence are invited to accept Judgeship of the High Court. Because of the status of the office of High Court Judge, the responsibilities and duties attached to the office, hardly any advocate of distinction declines the offer. Though it may be a great financial sacrifice to a successful lawyer to accept Judgeship, it is the desire to serve the society and the high prestige attached to the office and the respect the office commands that propel a successful lawyer to accept Judgeship. The experience and knowledge gained by a successful lawyer at the Bar can never be considered to be less important from any point of view vis-à-vis the experience gained by a judicial officer. **If the service of a judicial officer is counted for fixation of pension, there is no valid reason as to**

why the experience at Bar cannot be treated as equivalent for the same purpose.

20. The fixation of higher pension to the Judges drawn from the subordinate judiciary who have served for shorter period in contradistinction to Judges drawn from the Bar who have served for longer period with less pension is highly discriminatory and breach of Article 14 of the Constitution. The classification itself is unreasonable without any legally acceptable nexus with the object sought to be achieved.

21. The meagre pension for Judges drawn from the Bar and served for less than 12 years on the Bench adversely affects the image of the Judiciary. When pensions are meagre because of the shorter service, lawyers who attain distinction in the profession may not, because of this anomaly, accept the office of Judgeship. When capable lawyers do not show inclination towards Judgeship, the quality of justice declines.

22. In most of the States, the Judgeship of the High Court is offered to advocates who are in the age group of 50-55 years, since pre-eminence at the Bar is achieved normally at that age. After remaining at the top for a few years, a successful lawyer may show inclination to accept Judgeship, since that is the culmination of the desire and objective of most of the lawyers. When persons holding constitutional office retire from service, making a discrimination in the fixation of their pensions depending upon the source from which they were appointed is in breach of Articles 14 and 16(1) of the Constitution. **One rank one pension must be the norm in respect of a constitutional office.**

23. When a civil servant retires from service, the family pension is fixed at a higher rate whereas in the case of Judges of the High Court, it is fixed at a lower rate. **No discrimination can be made in the matter of payment of family pension.** The expenditure for pension to the High Court Judges is

charged on the Consolidated Fund of India under Article 112(3)(d)(iii) of the Constitution.

24. In the light of what is discussed, we accept the petitioners' claim and declare that for pensionary benefits, ten years' practice as an advocate be added as a qualifying service for Judges elevated from the Bar. Further, in order to remove arbitrariness in the matter of pension of the Judges of the High Courts elevated from the Bar, the reliefs, as mentioned above are to be reckoned from 1-4-2004, the date on which Section 13-A was inserted by the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005 (46 of 2005). Requisite amendment be carried out in the High Court Judges Rules, 1956 with regard to post-retiral benefits as has been done in relation to the retired Judges of the Supreme Court in terms of amendment carried out by Rule 3-B of the Supreme Court Judges Rules, 1959."

[Emphasis supplied]

40. It is thus clear that this Court, in unequivocal terms, has held that where persons who having occupied the constitutional office of a Judge of the High Court retire, there should not be any discrimination with regard to the fixation of their pension. It has been held by this Court that irrespective of the source from where the Judges of High Court are drawn, they must be paid the same pension just as they have been paid the same salaries and allowances and perks as serving Judges. This Court held that the fixation of higher pension to the Judges drawn from the district

judiciary who have served for a shorter period in contradistinction to Judges drawn from the Bar who have served for longer period with less pension is highly discriminatory and a breach of Article 14 of the Constitution. It held that the classification itself was unreasonable without any legally acceptable nexus with the object sought to be achieved.

41. In the said case, in paragraphs 22 and 23, this Court held that when persons holding the constitutional office retire from service, making a discrimination in the fixation of their pensions depending upon the source from which they were appointed was in breach of Articles 14 and 16(1) of the Constitution. It emphasized that *one rank one pension* must be the norm in respect of a constitutional office. It further emphasized that no discrimination can be made in the matter of payment of family pension. This Court, therefore, accepted the claim of the petitioner therein and declared that for pensionary benefits, ten years practice as an advocate be added as a qualifying service for Judges elevated from the Bar. It further directed that the reliefs granted by this Court would be reckoned from 1st April 2004 i.e., the date on which

Section 13-A was inserted by the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005. This Court further directed that requisite amendment be carried out in the High Court Judges Rules, 1956 with regard to post-retiral benefits as was done in respect of the retired Judges of this Court.

42. In pursuance to the directions issued by this Court (supra), the Parliament amended the HCJ Act and added Section 14A with effect from 5th April 2016, which reads thus:

“14A. Benefit of added years of service.—Subject to the provisions of this Act, a period of ten years shall be added and shall be deemed to have been added from the 1st day of April, 2004 for the purposes of pension, to the service of a Judge who is appointed as such Judge under sub-clause (b) of clause (2) of Article 217 of the Constitution.”

e. Union of India, Ministry of Law & Justice v. Justice (Retd) Raj Rahul Garg (Raj Rani Jain) and Others

43. Recently, in the case of ***Justice (Retd) Raj Rahul Garg (Raj Rani Jain)*** (supra), this Court was considering the case of a retired Judge of the High Court of Punjab and Haryana. The first respondent therein was initially appointed as a Judicial Magistrate in the State of Haryana on 11th May

1981. She was promoted as an Additional District Judge on 26th August 1997 and later, as a District Judge on 19th July 2010. In December 2013, she was recommended for appointment as a Judge of the High Court. However, due to the prolonged process of consideration of proposal for appointment, before her appointment as a Judge of the High Court, she retired as a District Judge on 31st July 2014. Within two months, she assumed the office of the Judge of the Punjab and Haryana High Court on 25th September 2014. She retired from service on 4th July 2016 after attaining the age of superannuation. Being aggrieved by the determination of her pensionary benefits, she approached the Punjab and Haryana High Court contending that her entire period of service from 11th May 1981 to 31st July 2014 as well as the service rendered by her from 25th September 2014 to 4th July 2016 be reckoned for pensionary and other retirement benefits. Vide judgment and order dated 14th August 2018, the Division Bench of the High Court of Punjab and Haryana held that the entire period of service rendered by her from 25th September 2014 to 4th July 2016 as a Judge of the High Court should be blended with her service from 11th May 1981

to 31st July 2014 as a Judge of the District Judiciary for the purpose of computing her pension. Aggrieved thereby, the Union of India filed an appeal by way of special leave before this Court.

44. In the said case, it was sought to be contended on behalf of the Union of India that on account of break-in service for a period between the date of her retirement as a District Judge (31st July 2014) and the date of assumption of office of Judge of the High Court (25th September 2014), which cannot be condoned, her pension had been rightly calculated on the basis of the last drawn salary as a District Judge. Specifically rejecting the said contention, this Court observed thus:

“28. The Union has sought to urge that the pension was correctly calculated on the basis of the last drawn salary as a District Judge. **To accept this position would be contrary to established precedent and would result in a clear discrimination between a member of the Bar who becomes a Judge of the High Court and a member of the district judiciary who is appointed as a Judge of the High Court.**

X-X-X

30. Acceptance of the submission of the Union of India would discriminate against Judges of the High Court based on the source from which they are drawn. A member of the Bar is entitled to the addition of ten years of service by virtue of the

provisions of Section 14A. On the addition of the years of service, their pensionary benefits would be computed on the basis of the last drawn salary as a Judge of the High Court. However, if the argument of the Union of India is accepted, the pension of a Judge who was a former District Judge would be computed on the basis of their salary as a District Judge. **A similar principle, as applicable to Judges appointed from the Bar, must be applied for computing the pension of a member of the district judiciary who is appointed to the High Court. Any other interpretation would result in a plain discrimination between the Judges of the High Court based on the source from which they have been drawn.** Such an interpretation would do disservice to the importance of the district judiciary in contributing to the judiciary of the nation, and would be contrary to the overall scheme and intendment of Chapter III of the statute. It would go against the anti-discriminatory principles stipulated by this Court in so far as Judges drawn from various sources are concerned”

[Emphasis supplied]

45. It can thus be seen that this Court, in unequivocal terms, observed that a similar principle as provided under Section 14A of the HCJ Act as applicable to the Judge appointed from the Bar is also required to be applied for computing the pension of a member of the District Judiciary who was appointed to the High Court. This Court held that any other interpretation would result in a plain discrimination between the Judges of the High Court based on the source from which they have been drawn.

f. Jagdish Chandra Gupta v. Union of India and Others

46. A decade after the decision of this Court in the case of ***P. Ramakrishnam Raju*** (supra), an almost converse situation fell for consideration before this Court in the case of ***Jagdish Chandra Gupta*** (supra).

47. In the said case, this Court was considering the case of the petitioner therein who had practiced as an advocate for about 14 years and 8 months before joining the Uttar Pradesh Higher Judicial Service as an Additional District and Sessions Judge on 8th September 1977. After serving the District Judiciary for 18 years and 6 months, he was elevated as a permanent Judge of the High Court of Judicature at Allahabad on 22nd March 1996. He attained the age of superannuation on 26th August 2002 after serving for 6 years, 5 months and 6 days as a Judge of the High Court. The grievance of the petitioner therein was that the pension payable to him was computed at the rate of lower than those Judges who had been elevated to the High Court from the Bar. This Court vide judgment and order dated 5th November 2024 held as under:

“**10.** The petitioner qualified for appointment as a Judge of the High Court since he had held judicial office for at least ten years within the meaning of Article 217(2)(a). However, the petitioner was also a member of the Bar for over fourteen years and eight months prior to his appointment as a Judge of the High Court.

11. In this backdrop, we are of the view that it would be appropriate, particularly having regard to the law which has been enunciated in the above decision, **to direct that the pensionary payments due to the petitioner be recomputed after giving him the benefit of an addition of ten years of service. However, it is clarified that the maximum basic pension which is payable to a Judge of the High Court of Rs 13,50,000 per annum shall continue to apply to the petitioner.** The petitioner retired from service on 26 August 2002. The difference in pensionary payments payable to the petitioner shall be computed with effect from the date of his retirement within a period of three months and the arrears that are due and payable in terms of the present order shall be paid over by 31 March 2025.”

[Emphasis supplied]

48. It can thus be seen that this Court directed that the pensionary payment due to the petitioner therein be recomputed after giving him the benefit of an addition of 10 years of service. However, it was clarified that the maximum basic pension which is payable to a Judge of the High Court would not exceed Rs.13,50,000/- per annum.

g. Justice Shailendra Singh and Others v. Union of India and Others

49. It will be relevant to note that vide judgment and order of even date in the case of ***Justice Shailendra Singh*** (supra), this Court was considering the case of the petitioners therein who were appointed as District Judges on 15th April 2010. Seven of the petitioners, in one of writ petitions therein, were appointed as Judges of the Patna High Court on 4th June 2022 and one of them, in the second writ petition therein, was appointed as a Judge of the said High Court on 22nd November 2023. After the petitioners therein were appointed as Judges of the High Court, no steps were taken by the authorities to open a General Provident Fund Account, as a result of which, on their retirement, they would not receive any terminal benefits pertaining to provident fund.

50. In the said case, it was sought to be urged on behalf of Union of India that the true intendment of the *proviso* to Section 20 of the HCJ Act was that a Judge who has held a pensionable civil post under the State (in that case the District Judiciary) would continue to subscribe to the provident fund to which he was subscribing before his appointment as a Judge of the High Court. It was urged that

after the implementation of the NPS with effect from 1st April 2004, all District Judges appointed after that date came to be governed by the NPS. It was submitted that as a consequence, any subscription to the provident fund must be in a manner consistent with the NPS. It was therefore, submitted that a member of the District Judiciary who was appointed as a Judge of the High Court would not be entitled to the benefit of the General Provident Fund which was otherwise applicable to the Judges of the High Court. This Court observed thus:

“13. The constitutional scheme for High Court Judges is unique in that the salaries and allowances payable to Judges of the High Court which are determined by a law enacted by Parliament are charged to the Consolidated Fund of each State under Article 202(3)(d). However, the pensionary payments payable to the Judges of the High Court in pursuance of a law enacted by Parliament under Article 221(2) are charged to the Consolidated Fund of India by virtue of Article 112(d)(3). Elaborate provisions have thus been made by the Constitution to secure the independence of the Indian Judiciary by providing Judges a measure of financial independence both during their term of office and after retirement.”

51. This Court, after referring to the constitutional history of Article 221 observed as to how in a very careful manner the provisions pertaining to the salaries, allowances and

pensions of the Judges of the High Courts were drafted with an aim to preserve the independence of the judiciary.

52. It will also be relevant to refer to the following observations of this Court in the said case:

“25. Clearly, therefore, it is not within the contemplation of the Constitution that the payment of salaries and the extension of other benefits both during and after service should be left to the vagaries of determination by individual States and the schemes which are applicable to civil service officers discharging duties in each State. The payment of salaries and allowances to sitting judges is charged to the Consolidated Fund of every State in terms of Article 202(3)(d). The importance which was attached to the payment of pension is clear from the fact that pensionary payments are charged on the Consolidated Fund of India under Article 112(d)(3).

26. These provisions of the Constitution have been curated with care, based on the overarching need to preserve judicial independence.”

53. It can be seen that this Court held that it was not within the contemplation of the Constitution that the payment of salaries and the extension of other benefits, both during and after service, should be left to the vagaries of determination by individual States. This Court observed that the payment of salaries and allowances to the sitting judges was charged to the Consolidated Fund of every State in terms of Article

202(3)(d) of the Constitution. It further observed that the importance which was attached to the payment of pension was clear from the fact that pensionary payments were charged on the Consolidated Fund of India under Article 112(d)(3) of the Constitution.

54. In the said case, after considering the earlier judgments, this Court came to the following conclusions:

“34. For the above reasons, we hold that:

- (i) The High Courts are constitutional institutions and upon appointment as judges of the High Court, all judges, irrespective of the source from which they are drawn, partake the character of holders of constitutional offices in equal measure;
- (ii) Neither Article 221(1) of the Constitution which empowers Parliament to determine the salaries of the Judges of the High Court nor Article 221(2) which empowers Parliament to determine the allowances and rights in respect of the leave of absence and pension permits discrimination between judges of the High Court based on the source from which they are drawn;
- (iii) Article 217 of the Constitution specifies distinct sources of recruitment for judges of the High Court from the district judiciary or, as the case may be, the Bar. But once appointed to the High Court, all judges form one homogenous class of constitutional office holders;
- (iv) Judicial independence is a part of the basic structure of the Constitution and there is an intrinsic relationship between financial

independence of judges and judicial independence;

- (v) The significance of provisions pertaining to the guarantee of service conditions, while in service and post retiral benefits for judges is evidenced by the fact that the salaries and allowances of sitting judges and the pensions of retired judges are in the nature of a charge on the Consolidated Fund of the State and the Consolidated Fund of India respectively;
- (vi) Any determination of the service benefits of sitting judges of the High Court and the retiral benefits which are payable to them including pension, must take place on the basis of the fundamental principle of non-discrimination between judges of the High Court who constitute one homogenous group; and
- (vii) All judges of the High Court, irrespective of the source from which they are drawn, are entrusted with the same constitutional function of discharging duties of adjudication under the law. Once appointed as judges of the High Court, their birthmarks stand obliterated and any attempt to make a distinction between judges, either for the purpose of determining their conditions of service while in service or any form of retiral dues would be unconstitutional.”

IV. DISCUSSION AND ANALYSIS

55. On taking a conspectus of all the decisions of this Court right from the case of ***M.L. Jain (I)*** (supra) to the case of ***Justice Shailendra Singh*** (supra), the following position emerges:

- (i) A retiring Judge's entire service as a Judge has to be reckoned for the purpose of calculating his pension. For that purpose, the last pay drawn by him has to be the pay drawn by him as a Judge of the High Court and not the pay that would have been drawn by him as a District Judge, had he not been appointed a High Court Judge [**M.L. Jain (I)** (supra)];
- (ii) The ceiling of any amount in clause (b) of Paragraph 2 of Part III of the First Schedule to the HCJ Act is not sustainable under Article 14 of the Constitution of India inasmuch as it creates discrimination. In any case, the said ceiling as provided under clause (b) of Paragraph 2 of Part III of the First Schedule to the HCJ Act was effaced with effect from 1st January 1996 as directed by this Court in the case of **M.L. Jain (II)** (supra). As such, the pension of retired Judges has to be calculated on the basis of ceiling as provided in *proviso* to Paragraph 2 of Part III of the First Schedule to the HCJ Act [**M.L. Jain (II)** (supra)];
- (iii) There cannot be any discrimination with regard to the fixation of the pension of a High Court Judge who

holds a constitutional office. Irrespective of the source from where the Judges are drawn, they must be paid the same pension just as they have been paid the same salaries, allowances and perks as serving Judges [**P. Ramakrishnam Raju** (supra)];

- (iv) The services of a Judicial Officer who becomes a High Court Judge from the judicial services so also the experience of a Member of the Bar who becomes a High Court Judge from the Bar is required to be taken into consideration [**P. Ramakrishnam Raju** (supra) and **Jagdish Chandra Gupta** (supra)];
- (v) Any classification on the basis of the High Court Judges appointed from the Bar as against the High Court Judges appointed from the services is unreasonable and without any legally acceptable nexus with the object sought to be achieved [**P. Ramakrishnam Raju** (supra)];
- (vi) *One rank one pension* has to be the norm in respect of a constitutional office [**P. Ramakrishnam Raju** (supra)];

- (vii) No discrimination can be made in the matter of payment of family pension [***P. Ramakrishnam Raju*** (supra)];
- (viii) That break-in service for a period between the date of retirement as a District Judge and the date of assuming the office as a High Court Judge cannot be a ground for denial of pension on the basis of salary drawn as a High Court Judge. The pension of even such Judges has to be on the basis of the salary drawn as High Court Judges [***Justice (Retd) Raj Rahul Garg (Raj Rani Jain)*** (supra)]; and
- (ix) That a person who retires as a High Court Judge even if he was appointed in the State Judiciary after the New Pension Scheme (NPS) came into effect would still be entitled to the benefit of GPF under the HCJ Act [***Justice Shailendra Singh*** (supra)].

a. Non-consideration of services rendered as District Judges for payment of Full Pension

56. A perusal of all the aforementioned judgments would reveal that a common thread running in all the judgments is that there cannot be any discrimination in the matter of

payment of pension to the retired Judges on any basis. This Court emphasised on the principle of *one rank one pension* for a constitutional class i.e., the office of High Court Judge. This Court found that, for ensuring independence of judiciary, it is necessary that like the salary to which a Judge is entitled to as a serving Judge, even after retirement he should get the same terminal benefits as that of a High Court Judge. Any discrimination on the ground of source of entry as a High Court Judge has been frowned upon. It has been emphasised that once a Judge enters into a constitutional office of the High Court Judge, then the dignity of the constitutional office demands that all Judges be paid the same pension. In this respect, it will be relevant to note that the ceiling of Rs.15,00,000/- per annum in the case of a Chief Justice and Rs.13,50,000/- in the case of any other Judge as provided in Paragraph 2 of Part I as well as Part III of the First Schedule to the HCJ Act is identical. It is thus clear that even such of the Judges who enter as High Court Judge from the District Judiciary shall be entitled to the maximum pension of Rs.13,50,000/- per annum irrespective of whether they opt for Part I of the First Schedule to the HCJ

Act or not. As held by this Court in the case of ***M.L. Jain (II)***, any restriction imposed in any of the clauses of Paragraph 2 of Part III of the First Schedule to the HCJ Act which would result in reducing the pension than the one provided in Paragraph 2 of both Part I and Part III of the First Schedule to the HCJ Act, would be patently discriminatory and therefore violative of Article 14 of the Constitution of India.

57. There is another analogy to substantiate the said conclusion. Section 13A of the HCJ Act provides that the salary of Rs.2,25,000/- is to be paid to every High Court Judge except the Chief Justice of the High Court. If this amount is multiplied by 12, it will come to an annual amount of Rs.27,00,000/-. It appears that, taking into consideration this figure, the basic amount of pension has been kept at 50% of the said amount which comes to Rs.13,50,000/-. We see no reason as to why the said amount shall not apply as a basic pension to all retired Judges of High Courts.

58. We say so for the reason also because if such a harmonious interpretation of the provisions of HCJ Act is not adopted, it will lead to an anomalous situation. For example, Section 17A of the HCJ Act entitles the family of a Judge, on

his/her death before or after the retirement, for family pension at the rate of 50% of his salary from the date following the death of the Judge. Such a family pension would be paid for a period of 7 years or for a period up to the date on which the Judge would have attained the age of 65 years had he/she survived, whichever is earlier. Thereafter, it is reduced to 30%. It is pertinent to note that the tenure of the Judge is not relevant for entitlement of family pension upon his death. In a hypothetical situation, let's say if a Judge dies on the next day of his joining the office, his family would be entitled to full family pension in accordance with Section 17A of the HCJ Act. However, if the contention that pension is linked to tenure is accepted, then a Judge who does not complete the requisite period, would be denied the full pension. In our view, such a situation would lead to an absolute absurdity.

59. We are, therefore, of the considered view that all retired Judges would be entitled to a pension calculated on the basic pension of Rs.13,50,000/- per annum as provided under Paragraph 2 of Part I and Paragraph 2 of Part III of the First Schedule to the HCJ Act. In our considered view, only such

an interpretation would remove any arbitrariness, inequality and discrimination and bring in parity in the matter of pension payable to all the retired Judges.

b. Denial of Full Pension owing to break-in-service

60. The *next issue* outlined by us was whether full pension can be denied to a Judge of the High Court on the ground that there is a break in service between the date of retirement as a District Judge and the date of assuming office as a Judge of the High Court.

61. It may not be necessary for us to decide the said issue inasmuch as in the case of ***Justice (Retd) Raj Rahul Garg (Raj Rani Jain)*** (supra), this Court had an occasion to consider the said issue. A Bench of three learned Judges of this Court had held that the break-in service of the retired Judge of the High Court could not be taken into consideration for denial of her pension and had directed her to be paid pension by taking into consideration the basic pension of Rs.13,50,000/- per annum.

c. Denial of Full Pension to Retired High Court Judges who enter the State Judiciary after NPS came into effect

62. The *next issue* is with regard to whether the retired Judges of the High Court who enter the State Judiciary after the New Pension Scheme (NPS) came into effect would be entitled to receive pension as Judges of the High Court or not.

63. In this respect, it is to be noted that, when a Judge of the High Court is in office irrespective of his/her source of entry, he/she is entitled to the same salary and the same perquisites. When all the Judges of the High Courts, when in office, are entitled to the same salary, perks and benefits, any discrimination amongst them on the ground of their source of entry, in our view, would be patently discriminatory and violative of Article 14 of the Constitution of India. When an equal treatment is given to all the Judges of the High Courts when they are in service and forming a class of Judges of the High Court, discrimination amongst them on any ground after their retirement for terminal benefits, in our considered view, would be violative of Article 14 of the Constitution of India.

64. We are of the considered view that permitting different States to have different terminal benefits would again lead to discrimination. As held by this Court in the case of **Justice Shailendra Singh** (supra), Article 216 of the Constitution does not permit any discrimination between the source from which Judges of the High Court are recruited. The principle of *one rank one pension* requires all retired Judges of the High Court to be paid uniform pension. We find that once a Judge assumes the office of the High Court Judge and enters into a constitutional class i.e., the class of a High Court Judge, no differential treatment would be permissible merely on the ground of date of appointment. We, therefore, hold that all the retired Judges irrespective of the date on which they were appointed would be entitled to receive the full pension at the rate of Rs.13,50,000/- as basic pension per annum as provided in Paragraph 2 of Part I of First Schedule and Paragraph 2 of Part III of First Schedule.

65. A question that would then arise is as to how the amount which has been contributed by such of the Judges and the State respectively under the New Pension Scheme (NPS) is to be treated. We find that, it will be equitable to

direct the States to refund the amount contributed by such Judges along with the dividend accrued thereon. Insofar as the contribution made by the State along with the dividend accrued thereon is concerned, it should be credited to the account of the State.

d. Denial of Full Pension to Judges who retired as Additional Judges

66. The *next issue* that is required to be considered is as to whether the Judges of the High Court who have retired as Additional Judges would be required to be paid full pension or not.

67. We find that, in order to consider that aspect, it will be appropriate to consider the definition of a “Judge” as defined in clause (g) of Section 2 of the HCJ Act which has been reproduced hereinabove. As discussed above, the perusal of the definition would show that the definition of a “Judge” is wide enough to include a Chief Justice, an acting Chief Justice, an additional Judge and an acting Judge of the High Court. In view of this, we find that, to bring out any artificial discrimination between a Permanent Judge and an Additional Judge in the term “Judge” as defined in Section 14

of the HCJ Act would be doing violence to the definition of a “Judge” as defined in clause (g) of sub-section (1) of Section 2 of the HCJ Act.

68. The Judges of the High Court are treated similarly for their pay and allowances and other service conditions irrespective of the source from which they are elevated; from the District Judiciary or the Bar. There is also no distinction insofar as an Additional Judge and Permanent Judge is concerned; the status being determined by the fortuitous circumstances of the vacancies available.

69. We, therefore, have no hesitation in holding that even the retired Judges who have retired as Additional Judges will be entitled to the same amount of basic pension i.e., Rs.13,50,000/- per annum.

e. Denial of Family Pension and Gratuity to widows/family members of Additional Judges of High Court

70. The *next issue* before us is with regard to denial of family pension and gratuity to the widow/family members of Additional Judges.

71. As discussed by us hereinabove, the definition of “Judge” includes a Chief Justice, an acting Chief Justice, an Additional Judge and an acting Judge. Therefore, the denial of family pension merely on the ground that a Judge died in harness as an Additional Judge, in our view, is patently arbitrary. We therefore hold that the widow/family members of even Additional Judges would be entitled to family pension in accordance with Section 17A of the HCJ Act.

72. Insofar as the denial of gratuity to the widow/family members of a Judge who died in harness is concerned, we are again of the considered view that the same is totally unsustainable. The definition of pension as provided in clause (gg) of sub-section (1) of Section 2 of the HCJ Act would reveal that the pension, apart from being a pension of any kind whatsoever payable to or in respect of a Judge, also includes any gratuity or “*other sum or sums so payable by way of death or retirement benefits*”. A harmonious construction of Section 14A with sub-section (3) of Section 17A of the HCJ Act and the judgments of this Court in the cases of **P. Ramakrishnam Raju** (supra) and **Jagdish Chandra Gupta** (supra) would lead to the conclusion that a

period of 10 years' has to be added to the services rendered by a Service Judge and further experience of a Bar Judge insofar as applicability of grant of pension is concerned. By the same analogy, a period of 10 years would be required to be added to clause (i) of sub-section (3) of Section 17A of the HCJ Act. We, therefore, hold that the gratuity payable on death/retirement of a Judge will have to be calculated after adding the period of 10 years to the period as provided in clause (i) of sub-section (3) of Section 17A of the HCJ Act etc.

f. Denial of Provident Fund as payable under the HCJ Act

73. The *last issue* pertains to payment of Provident Fund and other benefits on the retirement of the Judges of the High Court.

74. This issue is covered by a judgment of this Court in the case of ***Justice Shailendra Singh*** (supra). However, to avoid any further ambiguity, we deem it proper to clarify that all the allowances payable to a retired Judge on his retirement as a Judge of the High Court irrespective of the mode of entry as High Court Judge will have to be paid in accordance with the provisions of the HCJ Act. Needless to state that the

same would include leave encashment in accordance with Section 4A of the HCJ Act, commutation of pensions in accordance with Section 19 of the HCJ Act and Provident Fund under Section 20 of the HCJ Act, etc.

75. Though in view of the aforesaid discussions, it is not necessary to clarify, however, in order to avoid any ambiguity in future, we find that insofar as the retired Chief Justices of the High Courts are concerned, they will be entitled to full pension of Rs.15,00,000/- per annum and insofar as the retired Judges of the High Courts are concerned, they will be entitled to full pension of Rs.13,50,000/- per annum.

V. CONCLUSION

76. In the result, the present writ petitions are disposed of with the following directions:

- (i) The Union of India shall pay the *full pension* of Rs.15,00,000/- per annum to a retired Chief Justice of the High Court;
- (ii) The Union of India shall pay the *full pension* of Rs.13,50,000/- per annum to a retired Judge of

the High Court, other than a retired Chief Justice of the High Court;

- (iii) A retired Judge of the High Court shall also include such of the retired Judges of a High Court who have retired as Additional Judge of the High Court;
- (iv) We direct that the Union of India shall follow the principle of *One Rank One Pension* to all the retired Judges of the High Courts irrespective of their source of entry i.e., District Judiciary or the Bar, and irrespective of number of years that they have served either as a District Judge or a High Court Judge and all of them shall be paid full pension as aforesaid;
- (v) In the case of a retired Judge of the High Court who has previously served in the District Judiciary, the Union of India shall pay *full pension* irrespective of any break-in-service between the date on which he/she retired as a Judge of the

District Judiciary and the date on which he/she assumed charge as a Judge of the High Court;

- (vi) In the case of a retired Judge of the High Court who has previously served in the District Judiciary *and* who entered into the District Judiciary after the coming into force of the Contributory Pension Scheme or New Pension Scheme (NPS), the Union of India shall pay the *full pension*. Insofar as his/her contribution under the NPS is concerned, we direct the States to forthwith refund the entire amount contributed by such of the retired Judges of the High Court back to them along with the dividend, *if any*, accrued thereon. However, the contributions made by the State Governments shall be retained by the respective States along with the dividend, *if any*, accrued thereon;
- (vii) The Union of India shall pay family pension to the widow or family members of a Judge of the High Court who dies in harness irrespective of whether such a Judge of the High Court was a Permanent

Judge of the High Court or Additional Judge of the High Court;

(viii) The Union of India shall pay gratuity to the widow or family members of a Judge of the High Court who dies in harness by adding 10 years period to the period of service undergone by the said Judge irrespective of whether the *minimum qualifying service* as provided under clause (i) of sub-section (3) of Section 17A of HCJ Act had been completed or not; and

(ix) The Union of India shall pay all allowances payable to a retired Judge of a High Court in accordance with the provisions of the HCJ Act and the same shall include Leave Encashment in accordance with Section 4A of HCJ Act, Commutation of Pensions in accordance with Section 19, Provident Fund under Section 20 of the HCJ Act, etc.

77. Pending application(s), if any, shall stand disposed of.

78. We place on record our appreciation for all the learned Senior Counsel/learned counsel appearing in the matter. We also place on record our deep appreciation for the laborious pains taken by Shri K. Parameshwar, learned Senior Counsel ably assisted by Ms. Kanti, Mr. M.V. Mukunda, Ms. Raji Gururaj and Mr. Shreenivas Patil, learned counsel, in taking strenuous efforts in collating all the material and assisting this Court as an *Amicus Curiae*. We must also place on record our sincere appreciation for Shri R. Venkatramani, learned Attorney General for India appearing on behalf of the Union of India who has presented the case in an objective and dispassionate manner in keeping with the traditions of his high office.

.....CJI
(B.R. GAVAI)

.....J
(AUGUSTINE GEORGE MASIH)

.....J
(K. VINOD CHANDRAN)

**NEW DELHI;
MAY 19, 2025.**