

M.S. CHAWLA AND ORS.
v.
STATE OF PUNJAB AND ANR.

A

APRIL 16, 2001

[G.B. PATTANAIK AND B.N. AGRAWAL, JJ.]

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Service Law:

Consumer Protection Act, 1986: Section 10.

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District Consumer Forum—President—Salary of—Pension—Deductibility from—Retired District Judge appointed as President—Pension drawn by such District Judge deducted from salary payable to such President—Validity of—Held: The appointment of a retired District Judge as President of District Consumer Forum is a case of re-employment of a pensioner—Such pensioners are governed by Punjab Civil Services Rules—Hence, salary of such re-employed District Judge as President has been rightly fixed after deducting his pension amount—Punjab Civil Services Rules, Note 3(a)(i) to R. 7.18 Ch. VII Vol. II—Government Order dated 25-1-1996.

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The appellants were retired District Judges prior to their appointments as Presidents of District Consumer Forums under Section 10 of the Consumer Protection Act, 1986. The respondent-State issued a Government order dated 25-1-1996 by which it was directed that the pension amount of each of these appellants should be deducted from their salary payable to them as Presidents of the District Consumer Forums. The High Court dismissed the writ petition filed by the appellants challenging the aforesaid order. Hence this appeal.

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On behalf of the respondents it was contended that the appellants were re-employed pensioners; that under Section 7.18 of Chapter VII of Volume II of the Punjab Civil Services Rules the competent authority could determine whether the appellants' pension would be held wholly or partly in abeyance; and that Note 3(a)(i) of Section 7.18 of the Rules stipulated that pension which was non-effective pay should not ordinarily be allowed in addition.

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The following question arose before this Court

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A Whether the pension amount received by the appellants in respect of their previous services as District Judges can be deducted from the salary of the President of the District Consumer Forum fixed under the provisions of the Consumer Protection Act, 1986 and the Rules framed thereunder?

B Dismissing the appeal, the Court

B HELD: 1.1. The appointment of a District Judge, after his superannuation as the President of the District Consumer Forum under the Consumer Protection Act, 1986 cannot but be held to be a case of re-employment of a pensioner inasmuch as the said District Judge is in receipt of a pension for the services rendered as a District Judge in accordance with the provisions contained in the Punjab Civil Services Rules, Chapter VII of Volume II. [87-A-B]

C 1.2. The appropriate authority will have to decide the pay and allowance, which the retired District Judge is entitled to receive on being appointed as the President of the District Forum notwithstanding the fixation of such pay under the Rules framed under the Consumer Protection Act, 1986 and while fixing the same, the principle underlined in Note 3(a)(i) to Section 7.18 of Chapter VII of Volume II of the Rules has to be followed. [87-C]

D 2. There is no infirmity in the Government Order dated 25-1-1996 by which the salary of the re-employed District Judges as President of the District Consumer Forum has rightly been fixed taking into account the pension which they are in receipt of as retired District Judges. [87-D]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 907 of 2001.

F From the Judgment and Order dated 12.3.99 of the Punjab and Haryana High Court in C.W.P. No. 4351 of 1998.

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G Civil Appeal No. 908 of 2001.

P.P. Rao, Anoop G. Chaudhary, Ravindra Bana, Manoj Swarup, Prem Malhotra, K.C. Bajaj, Vinod Shukla, Rajeev Sharma, Mababir Singh and Sandeep Singh for the appearing parties.

H The Judgment of the Court was delivered by

PATTANAİK, J. These appeals filed by the Presidents of the District Consumer Forum, appointed under Section 10 of the Consumer Protection Act, are directed against the judgment of Punjab and Haryana High Court and the question for consideration is whether the pension amount received by these appellants in respect of their previous services as District Judges, can be deducted from the salary of the President of the District Consumer Forum, fixed under the provisions of the Consumer Protection Act and the rules framed thereunder? The appellants approached the High Court by filing a writ petition, challenging the legality of the Government Order dated 25th of January, 1996, by which order it had been directed that the pension amount of each of these appellants should be deducted from their salary, payable as President of the District Consumer Forum. The High Court by the impugned judgment, dismissed the writ petition, essentially on the ground that the appellants knew while joining the post of President, District Consumer Forum that the pension amount received by them as Members of the Superior Judicial Service would be deducted from their salary and, therefore, they having joined the post with full knowledge and without any protest, they do not have any enforceable right under the provisions of the Act and the Rules, as contended.

Mr. P.P. Rao, the learned senior counsel, appearing for the appellants, raised the following contentions in assailing the impugned judgment of the High Court:

- (1) The salary of the President of the District Consumer Forum, having been fixed under Section 10(3) of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act') read with Rule 3(1) of the Consumer Protection Rules, 1987 (hereinafter referred to as 'the Rules') and there being no provision for deduction of the pension, which such President had been drawing in respect of the past services rendered, the Government is not entitled to issue an Administrative Order to that effect and, therefore, the Order directing deduction of pension is illegal.
- (2) Pension being neither a bounty nor a matter of grace depending upon the sweet will of the employer, as has been held by this Court in the Constitution Bench decision in *D.S. Nakara's* case, the right to receive pension by each of the appellants, is a statutory right governed by the Punjab Civil Services Rules, made under the proviso to Article 309, and in the absence of any provision thereunder, the said pension cannot be deducted from

A the salary provided for the President of the District Consumer Forum under the Act and the Rules framed thereunder.

(3) In any view of the matter, the statutory right of receiving pension for services rendered as District Judges, cannot be taken away by an administrative order made by the Governor.

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(4) The Consumer Protection Act and the Rules framed thereunder, itself having provided the conditions of service and having fixed the salary of the President of the District Consumer Forum, the same cannot be, in any manner altered by an administrative order.

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In this view of the matter, the impugned Order dated 25.1.1996, is on the face of it illegal, inoperative and null and void and must be struck down. Mr. Rao also further contended that the conclusion of the High Court, applying the principle of waiver and estoppel is wholly untenable, since there is no question of waiver or estoppel against any statute and the High Court committed error in holding that the appellants knew about the condition that the pension amount would be deducted from the salary/honorarium payable to the President of the District Consumer Forum.

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Mr. A.G. Chaudhary, appearing for the State of Punjab, on the other hand contended that Volume II of the Punjab Civil Services Rules deal with the pension of an employee. In Chapter VII of the aforesaid Punjab Civil Services Rules of Volume II, Clause 7.18 enables the authority competent to fix the pay and allowances of the post in which the pensioner is re-employed to determine whether his pension shall be held wholly or partly in abeyance. Note 3 of the aforesaid provision, unequivocally stipulates that in determining the pay of re-employed pensioner, the principle to be followed is that the pay must not exceed the substantive pay drawn immediately before retirement or the maximum of the scale applicable to the post in which the Government employee is re-employed whichever is less and pension which is non-effective pay, shall not ordinarily be allowed in addition. In view of the aforesaid provisions and the appointment of the retired District Judges as President of the District Consumer Forums being re-employment, the appropriate authority was entitled to fix their salary and fixation of their salary has been done by the appropriate authority by issuing the Government Order dated 25th January, 1996, and therefore, the said order is within the powers conferred under the Punjab Civil Services Rules and in consonance with the principles enunciated therein. In this view of the matter, the High Court was fully justified in not

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striking down the aforesaid Government Order.

It is no doubt true, as contended by Mr. Rao the learned senior counsel, appearing for the appellants that if the emoluments attached to a post under any Act are fixed under the Act, then by an executive order, the same cannot be altered or determined contrary to the provisions of the Act and the Rules. The "District Forum" is defined in Section 2(h) to mean a Consumer Disputes Redressal Forum established under clause (a) of Section 9 of the Consumer Protection Act, 1986. Section 9(a) makes it obligatory for the State Government to establish a Consumer Disputes Redressal Forum to be known as the "District Forum" in each District of the State by a notification. Section 10(1)(a) of the Act, provides that each District Forum shall consist of a person who is, or has been, or is qualified to be a District Judge, who shall be its President. Sub-section(3) of Section 10 provides that the salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government. Sub-section (2) of Section 30 enables the State Government by a notification to make rules for carrying out the provisions contained in Sub-section(3) of Section 10 along with other provisions mentioned in the said sub-section. Thus, the salary or honorarium and allowances payable to and the terms and conditions of service of Members of the District Forum could be prescribed by the State Government by the rules framed for the purpose. In exercise of powers under sub-section (2) of Section 30, the Government of Punjab, Department of Food and Supplies (Consumer Protection Branch), has made the Rules called the Consumer Protection (Punjab) Rules, 1987. Sub-rule (1) of Rule 3 thereof prescribes that the President of the District Forum shall receive the salary of the District judge of a District Court if appointed on whole-time basis or an honorarium of Rs. 150 per day if appointed on part-time basis and other members, if sitting on whole-time basis, shall receive a consolidated honorarium of Rs. 2000 per month and if sitting on part-time basis, a consolidated honorarium of Rs.100 per day for the sitting. The aforesaid salary and honorarium is defrayed out of the Consolidated Fund of the State Government, as provided in sub-rule (3) of Rule 3. These Rules of 1987, stood amended by Consumer Protection, Punjab) Rules, 1993 by notification dated 2nd of August, 1993. Under the amended Rules, the President of a District Forum, if appointed on whole-time basis, is entitled to pay in the grade of pay admissible to a Judge of a District Court. Neither in the Act nor in the Rules framed thereunder, there has been any indication as to whether on being appointed as President of the District Consumer Forum, after superannuation as a District Judge, the pension

A receivable is to be deducted. The pension of such superannuated District Judges is Governed by the Punjab Civil Services Rules, Volume II. Rule 1.1(a) of Punjab Civil Services Rules Vol.II, unequivocally stipulates that the Rules in this part regulate the grant of pensions to the Government employees to whom the rules in Volume I of these rules apply. The Punjab Civil Services Rules have been issued by the Governor of Punjab under proviso to Article 309 of the Constitution. The Punjab Civil Services Rules apply to all Government employees except those who are specifically excluded from the operation of the Rules by a general or special order of the competent authority. Appendix (2) to the Rules contains a list of those employees who have been excluded from the operation of the rules. The expression "State Government employees" has been defined to mean all persons whose conditions of service may be regulated by the rules made by the Governor of Punjab under proviso to Article 309 of the Constitution. It is undisputed that the pension of a District Judge, on his superannuation is determined in accordance with the Punjab Civil Services Rules, Volume II. Chapter II of Volume II deals with general provisions relating to grant of pensions. Section 2.1 thereof provides that every pension shall be held to have been granted subject to the conditions contained in Chapter VII of these rules. Chapter VII of Volume II of the Punjab Civil Services Rules contains Section 7.18, and the same is quoted herein below:

E "Section 7.18.—The authority competent to fix the pay and allowances of the post in which the pensioner is re-employed shall determine whether his pension shall be held wholly or partly in abeyance. If the pension is drawn wholly or in part, such authority shall take the fact into account in fixing the pay to be allowed to him."

F Note 3(a)(i) to aforesaid Section 7.18 is extracted hereunder:

G "Note 3(a): In determining the pay of a re-employed pensioner, the following principles shall be observed namely:- (i) the pay must not exceed the substantive pay drawn immediately before retirement or the maximum of the scale applicable to the post in which the Government employee is re-employed whichever is less and pension which is non-effective pay, shall not ordinarily be allowed in addition:

H Provided that if the pension does not exceed Rs. 50 p.m., the entire amount of pension and where it exceeds Rs. 50 per month the first Rs. 50 shall not be taken into account in fixing the pay on re-employment.

The appointment of a District Judge, after his superannuation as the President of the District Consumer Forum under the Consumer Protection Act, cannot but be held to be a case of re-employment of a pensioner inasmuch as the said District Judge is in receipt of a pension for the services rendered as a District Judge in accordance with the provisions contained in the Punjab Civil Services Rules, Volume II. Since Section 2.1 of Chapter II of Volume II, unequivocally states that every pension shall be held to have been granted subject to the conditions contained in Chapter VII and Chapter VII contains Rule 7.18 as well as Note 3(a)(i), which have been extracted before, the conclusion is irresistible that the appropriate authority will have to decide the pay and allowances, which the retired District Judge is entitled to receive on being appointed as the President of the District Forum notwithstanding the fixation of such pay under the Rules framed under Consumer Protection Act and while fixing the same, the principle underlined in Note 3(a)(i) has to be followed. This being the position, we see no infirmity with the Government Order dated 25th of January, 1996 and under the said notification the salary of re-employed District Judges as President of the District Consumer Forum, have rightly been fixed, taking into account the pension, which they are in receipt of, as retired District Judges. The contention of Mr. Rao that the salary fixed under the Act and the Rules framed thereunder is being altered by an administrative order is of no force, in view of the legal provisions enumerated above and in fact, it is the provision of the Punjab Civil Services Rules, dealing with the salary of re-employed pensioners, which governs the field. The other contention on the basis of the judgment of this Court in D.S. Nakara, that pension is not a bounty is also of no consequence. In the aforesaid premises, we do not find any legal infirmity with the Judgment of the High Court, requiring our interference under Article 136 of the Constitution. These appeals accordingly fail and are dismissed.

V.S.S.

Appeals dismissed.