

Court No. - 39

Case :- WRIT - A No. - 7743 of 2019

Petitioner :- Justice Vinod Chandra Misra

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Prakash Chandra Shukla, Sri V.K. Singh
Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri V.K. Singh, learned Senior Advocate assisted by Shri Nand Lal, learned counsel for the petitioner and Ms. Kritika Singh, learned Additional Chief Standing Counsel for the State.

2. Present petition has been filed to assail part of the order dated 15.11.2017 passed by the Principal Secretary, Department of Law, Government of Uttar Pradesh. That order arose on an earlier direction issued by the writ Court in Writ A No.20593 of 2015 decided on 15.04.2015. Therein it was observed as below:-

"Consequently, in the facts of the case, we proceed to direct the Chief Secretary, Government of U.P. Lucknow to look into the matter and thereafter take appropriate decision in the matter, in accordance with law, preferably within period of next two months from the date of production of certified copy of this order. For the said purpose, Chief Secretary should call all the concerned officials who have a role to play, in the said fixation in question and in respect of other benefits".

3. While dealing with the representation thus filed, the State Government took an informed decision sanctioning pension equivalent to that payable to a retired Chief Justice of a High Court. That decision is based on the own understanding of the State Government- of Section 4(5) of the Uttar Pradesh State Law Commission Act, 2010 (hereinafter referred to as the Act) read with Rule 5 of the Uttar Pradesh State Law Commission (Salaries and Allowances and Conditions of Service of Chairperson) Rules,

2011 (hereinafter referred to as the Rules).

4. For ready reference Section 4(5) of the Act reads as below:-

"(5) The allowances and pension, if any payable to, and other conditions of service of the Chairperson or a Full-time Member shall be such as may be prescribed:

Provided that in prescribing the salary, allowances and pension payable to and other conditions of service of the Chairperson, regard shall be had to the salary, allowances and pension payable to and other conditions of service, of the Chief Justice of High Court.

Provided further that if the Chairperson or a Full-time Member at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of services as the Chairperson or, a Full-time Member as the case may be, shall be reduced-

(a) by the amount of that pension; and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity:

Provided also that the salary, allowances and pension, if any, payable to, and other conditions of service of the Chairperson or a Full-time Member shall not be varied to his disadvantage after his appointment."

5. Also, Rule 4(5) of the Rules, reads as below:-

"5. Pension shall be admissible to the Chairperson, equivalent to the pension which would be admissible to the Chief Justice of a High Court under the High Court Judges (Salaries and Conditions of Service) Act, 1954 and relevant Rules including Rule 2 of the High Court Judges Rules, 1956 read with the All India Services (Death-cum Retirement Benefits) Rules, 1958, for the period of service rendered as Chairperson, in addition to the pension he may be entitled to, in respect of any previous service under the Central Government or any State Government:

Provided that the pension, payable to the Chairperson under this rule together with the amount of pension, including commuted portion of pension, if any, admissible to him under the Central or State Government prior to his appointment in the Commission shall not exceed rupees forty five thousand per mensem or rupees five lac forty thousand per annum as admissible to the Chief Justice of a High Court under para 2.1.1(iii) of the order no. L-11017/IX 2008-Jus., dated May 11, 2009 issued by the Ministry of Law and Justice, Government of India:

Provided further that such ceiling shall be subject to further revision according to that applicable to the Chief Justice of High Court from time to time:

Provided also such pension shall be payable to the Chairperson if he has put in minimum two years of service in the Commission."

6. Here, we may also take note of the Rule 14 of the Rules, which reads as below:-

"14. Other allowances and conditions of service of the Chairperson provisions wherefor have not expressly been made in the Act or these Rules, shall be such as are applicable to the serving Chief Justice of a High Court."

7. Since much reliance has been placed on the High Court Judges

(Salaries and Conditions of Service) Act, 1954 (hereinafter referred to as the Judges Act) and the Rules framed thereunder, we also consider it proper to take note of Section 2(g) and Section 2 (gg) of the Judges Act. They read as below:-

"2."

(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;]"

8. Then, Section 17A of the Judges Act, reads as below:-

"17-A. 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, calculated at the rate of [Fifty per cent of his salaries plus fifty per cent of his dearness pay's] 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 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 deduction 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 [twenty days] salary for [each completed six months period] of service as Judge;

Explanation.- In [sub-section 3] the expression 'Judge' has the same meaning as in Section 14."

9. It is in that statutory context that the impugned decision has been made by the State Government. It has accepted the base contention of the petitioner that he is entitled to be paid pension equivalent to that payable to a retired Chief Justice of a High Court. However, no interest has been paid on the arrears of such pension paid under the impugned order. The further claim of the petitioner that his spouse may remain entitled to claim 'family pension' equivalent to that payable to a spouse of a retired Chief Justice of a High Court, should that need arise, has been rejected on the following reasoning contained in the impugned order:-

" चूँकि उत्तर प्रदेश राज्य विधि आयोग (अध्यक्ष के वेतन भत्ते और सेवा की शर्त) नियमावली, 2011 में पारिवारिक पेंशन की कोई व्यवस्था नहीं है और मा०उच्च त्यायालय द्वारा श्री मिश्र को पारिवारिक पेंशन की अनुमन्यता के सम्बन्ध में कोई आदेश भी पारित नहीं किये गये हैं , के दृष्टिगत उक्त पेंशन भुगतान आदेश दिनांक 15-06-2015 में पारिवारिक पेशन की धनराशि का उल्लेख किये जाने का कोई औचित्य नहीं है , क्योंकि उन्हें पारिवारिक पेंशन नियमानुसार अनुमन्य नहीं है। "

10. Thus the present petition has been filed seeking two reliefs:-

(i) the petitioner be awarded interest on the delayed computation and payment of entitled pension.

(ii) direction be issued to command the respondent to make necessary provision to pay 'family pension' to the spouse of the petitioner at the rate at which such pension may be payable to a spouse of a retired Chief Justice of a High Court, should that eventuality arise.

11. Briefly, the facts giving rise to the present petition are that the petitioner demitted office as a Judge of this Court on 29.01.2008. On 30.01.2008 he was appointed as Chairman of State U.P. Law Commission. At that time, the Act and the Rules had not been framed. However, it is a fact that the Act was enforced in the year 2010 and the Rules were enforced in the year 2011. On 11.09.2012, after serving for almost five years as Chairman of the

U.P. State Law Commission, the petitioner demitted office.

12. At that stage, the petitioner claimed pension entitlement in terms of the Act and the Rules. However, the State Government rejected his claim. That led to the filing of Writ A No.20593 of 2015 (noted above). Upon certain directions being issued in that writ petition, first, pension was sanctioned on 27.07.2015. The arrears were computed and paid thereafter. It is an admitted case between the parties, since then the petitioner is being paid pension equivalent to that payable to a retired Chief Justice of a High Court. The only dispute in that regard is non-payment of interest.

13. Though the petitioner demitted office as Chairman of State Law Commission on 11.09.2012, the pension claimed was first approved by the State Government by means of the impugned order, almost four years thereafter on 27.05.2015. Hence, the petitioner claims entitlement to interest on that delayed payment. According to learned Senior Counsel for the petitioner, no legal impediment ever existed as may justify the delay in computation and payment of correct pension. Interest being accretion on capital, normally, the State must compensate the petitioner by paying appropriate interest for delay caused by its inaction in payment of pension earned by the petitioner.

14. As to the entitlement of 'family pension' being claimed by the petitioner, that claim has been declined by the State Government by the impugned order. Referring to Section 4(5) of the Act read with Rule 4(5) of the Rules read with Section 2(g) and 2(gg) of the Judges Act read with Section 17A of the Judges Act, it has been vehemently urged that the spouse of the petitioner would be fully entitled to 'family pension', should that eventuality arise. The phrases "pension of any kind", "payable to or in respect of a

Judge" and "other sum or sums so payable by way of death or retirement benefits" appearing in Section 2(gg) of the Judges Act clearly include 'family pension' (provided under Section 17A of the Judges Act). They leave no doubt that 'family pension' provided under Section 17A of the Judges Act is included within the meaning of that term defined under Section 2(gg) of the Judges Act.

15. By virtue of that inclusion of 'family pension' as a type of pension and the phrase "payable to a Judge or in respect of a Judge", necessarily, 'family pension' is a pension payable arising from the status of the petitioner as a former Chairperson of the State Law Commission, by virtue of the express provision of Rule 4(5) of the Rules.

16. Alternatively, learned Senior Counsel for the petitioner has also referred to Rule 14 of the Rules to submit that in any case 'family pension' being an allowance or part of the conditions of service of a Chief Justice of a High Court, the same would necessarily apply to a Chairperson of the State Law Commission. Even though, it ('family pension') may not have been expressly provided for under the Rules, that right exists on the strength of legislation by reference.

17. On principle, the above submission have been bolstered on the strength of a decision of the Supreme Court in **Smt. Bhagwanti Vs. Union of India (1989) 4 SCC 397**, wherein, it has been observed as below :-

"9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the government servant. Payability of the family pension is basically on the selfsame consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary."

18. On the other hand, learned Additional Chief Standing Counsel

states that there is no specific provision for payment of 'family pension', either under the Act or the Rules. Specifically, Section 4(5) of the Act and Rule 4(5) of the Rules do not provide for 'family pension'. Insofar as the Act and the Rules only provide for payment of pension to the Chairperson, that compliance has been made. No further entitlement exists in favour of the petitioner or his spouse to claim 'family pension' either under the Act or the Rules, in any circumstances.

19. Second, it has been objected 'family pension' can only be granted under one rule i.e. the Judges Rules. Therefore, the entitlement of 'family pension' being claimed by the petitioner may arise only in terms of the Judges Rules and not other Rules. Those Rules do not provide for 'family pension' to be paid to the spouse of a retired Chairperson of the State Law Commission. Here, it has been further submitted that under the general Rules governing employees of the State Government, the entitlement of 'family pension' may arise only to families of employees who may have served at least for 10 years. Since the petitioner never served for that duration of time, the claim of 'family pension' is wholly unfounded. According to the State-respondents, the petitioner had served on the post of Chairperson of State Law Commission for a period of less than two years from the date of enforcement of the Act. Therefore, he may never claim entitlement to 'family pension'. At the same time, on query made, learned Additional Chief Standing Counsel could not dispute the fact that the petitioner is being paid pension in respect to service rendered as a Chairperson of the State Law Commission.

20. Since 'family pension' is described to be a separate right conferred under a separate statute, the petitioner is not entitled to raise such claim in absence of that statutory right either under the

Act or the Rules or any other Rule applicable to State employees.

21. As to claim made for payment of interest on delayed payment of due pension, it has been contended, the delay was bonafide. Payment has been made in compliance to the judicial order passed in that regard. Therefore, no claim of interest may arise.

22. Having heard learned counsel for the parties and having perused the record, in the first place, it cannot be denied that there is statutory provision contained under the Act or the Rules to provide for payment of pension to a retired Chairperson of the State Law Commission. Specifically and directly, the Act and the Rules provide for payment of pension. Whereas the petitioner demitted office on 11.09.2012, that pension is being paid to the petitioner since the decision was taken in that regard by the State Government, after more than two years on 27.05.2015. It has been computed equivalent to the pension payable to a retired Chief Justice of a High Court. The only dispute surviving in that regard is with respect to computation of interest. Insofar as the statute was never in doubt and insofar as the State Government has itself reached a conclusion that the petitioner was entitled to payment of higher pension equivalent to that payable to a retired Chief Justice of a High Court, we find, no reason why interest may not be paid on the arrears amount of pension. The judicial decision referred to by the learned Additional Chief Standing Counsel was not a decision adjudicating that right. Rather, it was an order requiring the State Government to take a decision in that regard that the State Government was otherwise obligated to make. Payment of pension is a statutory right arising from services rendered. That right existed from before. Since there was no conduct offered by the petitioner as may have delayed the computation and payment of higher pension to which he was entitled and since there never

existed any legal impediment or doubt in that payment, we find the stand of the State Government untenable insofar as interest has not been paid on arrears of correct pension computed with delay. The State must compensate for the loss of time in making the due payment.

23. As to the entitlement of 'family pension', though the Act and the Rules do not make a specific/ direct provision for payment of 'family pension', at the same time provision of Rule 4(5) of the Rules. It clearly provides that the pension admissible to a Chairperson shall be equivalent to the pension admissible to the Chief Justice of a High Court under the Judges Act read with the Judges Rules. Therefore, it is not open to the State-respondent to contend that for the purpose of examination of entitlement to pension we may look at the Judges Act and the Judges Rules but for determining the entitlement to 'family pension', we may not look at the Judges Act or the Judges Rules.

24. That reasoning would be self conflicted. Once the State admits, that for the purpose of pension payable to the petitioner the Judges Act and the Judges Rules are applicable and therefore the petitioner is entitled to higher pension equivalent to that payable to a retired Chief Justice of a High Court, there is no inherent reason or logic to not read the Judges Act and the Judges Rules for the purpose of determining the entitlement to 'family pension'. Once the legislation by reference made under the Judges Act and the Judges Rules and the provisions thereof are applicable to the petitioner for the purpose of payment of pension, we must necessarily look at the provision of the Judges Act and the Judges Rules to decide the issue of entitlement of 'family pension' as well.

25. In **Surana Steels (P) Ltd. v. CIT, (1999) 4 SCC 306: (1999)**

237 ITR 777 1999 SCC OnLine SC 443, it has been observed as under:-

"11. Section 115-J explanation clause (iv), is a piece of legislation by incorporation. Dealing with the subject, Justice G.P. Singh states in Principles of Statutory Interpretation (7th Edn., 1999)—

"Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been 'bodily transposed into it'. The effect of incorporation is admirably stated by Lord Esher, M.R.: 'If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it.' (p. 233)."

26. Specifically, extracted above, by virtue of Section 2(gg) of the Judges Act, pension includes within the meaning of that term (i) "pension of any kind", (ii) "pension payable to or in respect of a Judge" and (iii) "other sum or sums" so payable by way of death or retirement benefits. Thus, for the purpose of the Judges Act, there can be no doubt that 'family pension' (provided under Section 17A of the Judges Act) is a variety of pension contemplated under that Act.

27. No counter implication may ever arise in view of that definition clause. It is so, because, if the 'family pension' were to be excluded from the scope of the definition of the term 'pension' under Section 2(gg) of the Act and 'pension' were to be restricted to any amount payable to a retired Judge during his lifetime alone and if it were to be read to exclude any amount payable thereafter, the words "of any kind", "in respect of a Judge" and the words "other sum or sums" payable by way of death appearing in that definition clause would be rendered otiose. It is a settled principle in interpretation of statutes that no word of the legislature may be interpreted by Courts as may render the same meaningless or otiose.

28. In **Aswini Kumar Ghose v. Arabinda Bose, (1952) 2 SCC 237**, it has been observed as below:-

"26. Much ado was made on both sides about the comma occurring just before the word "or" in the non obstante clause, the petitioner stressing its importance as showing that the adjectival clause "regulating the conditions, etc." does not qualify the words "Indian Bar Councils Act" which are separated by the comma and that, therefore, the whole of that Act is superseded, while the learned counsel for the respondents insisted that in construing a statute, punctuation marks should be left out of consideration. Nothing much, we think, turns on the comma, as it seems grammatically more correct to take the adjectival clause as qualifying "law". Having regard to the words "anything contained" and the preposition "in" used after the disjunctive "or", the qualifying clause cannot reach back to the words "Bar Councils Act". But, whichever way we take it, it must be admitted that, in framing the non obstante clause, the draftsman had primarily in mind those provisions which stood in the way of an Advocate not enrolled in any particular High Court practising in that Court. It does not, however, necessarily follow that Section 2 is concerned only with the right of Advocates of the Supreme Court to practise in the High Courts in which they are not enrolled. The true scope of the enacting clause must, as we have observed, be determined on a fair reading of the words used in their natural and ordinary meaning, and in the present case, there is not much room for doubt on the point. The words "every Advocate" and "whether or not he is an Advocate of that High Court" make it plain that the section was designed to apply to the Advocates of the Supreme Court not only in relation to the High Courts of which they are not Advocates but also in relation to those High Courts in which they have been already enrolled. The learned Judges below dismissed the words "whether or not, etc." with the remark that "they are not very apposite", as "no one who is an Advocate of a particular High Court requires to be an advocate of the Supreme Court in order to practise in that Court". While it may be true to say that Section 2 does not give Advocates of many of the High Courts any additional right in relation to their own courts, it would, according to the petitioner's contention, give at least to the Advocates of the Calcutta and Bombay High Courts some additional right in the Original Side of those Courts, and that may well have been the purpose of using those words. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(emphasis supplied)

29. On the contrary each word and phrase used by the legislature must first be given its natural meaning and that natural meaning must always be given full effect, unless the context may otherwise require.

30. In **Jugalkishore Saraf v. Raw Cotton Co. Ltd., 1955 SCC OnLine SC 26: (1955) 1 SCR 1369: AIR 1955 SC 376**, the Hon'ble Supreme Court has observed as under:-

"6. The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In the present case a literal construction of the rule leads to no apparent absurdity and, therefore, there can be no compelling reason for departing from that golden rule of construction....."

31. Here, by virtue of Section 17A of the Judges Act, specifically 'family pension' has been provided under that Act. Therefore there can never arise any argument of any contrary intention expressed under the Judges Act vis a vis the entitlement of the spouse of a

Judge of a High Court to receive 'family pension' being 'pension'. Thus, it has to be recognized that 'family pension' payable to a Judge of a High Court is a variety of pension payable to a Judge that being pension of a 'kind' of pension payable "with respect of a Judge" and may ever otherwise be included as "other sum" "payable by way of death benefit" to the surviving entitled heir of a person who may have served as a Judge of a High Court.

32. Once that is recognized, what survives for our consideration is whether by virtue of the provision of the Act and the Rules that entitlement would extend to a Chairperson of the State Law Commission. Here, we note that the term "pension" is not defined either under the Act or the Rules. Section 4(5) only provides that allowances and pension payable to a Chairperson shall be as may be prescribed. The first proviso thereto itself makes clear that in fixing the salary allowances and pension payable to a Chairperson of State Law Commission regard shall be had to salary allowances pension payable to and other conditions of service of the Chief Justice of a High Court. At the same time, the Rule 4(5) of the Rules clearly prescribes that the pension admissible to a Chairperson of a State Law Commission shall be 'equivalent' to the pension which would be admissible to the Chief Justice of a High Court under the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the relevant Rules including Rule 2 of the High Court Judges Rules, 1956.

33. Therefore the prescription made under the Rules necessarily adopts the entitlement, the method of computation and payment of pension admissible to a retired Chairperson of the State Law Commission- as provided to a Chief Justice of a High Court in terms of the Judges Act and the Judges Rules. As noted above, under the Judges Act and the Judges Rules 'family pension' is

included in 'pension' entitlement. For that reason the payment of 'family pension' to the spouse of a retired Chairperson of the State Law Commission would remain included in the 'pension' admissible to a retired Chairperson of the State Law Commission.

34. If there may exist any doubt, the same stands cured by the express provision of Rule 14 of the Rules. Thus, if for any reason it were to be considered that 'family pension' payable to the spouse of a Chairperson of a State Law Commission may not be included in the term "pension payable to a Chairperson", then in that case, by virtue of all other allowances and conditions of service of the current Chief Justice of a High Court being applicable to the Chairperson of State Law Commission, by necessary implication, on that (second) legislation by reference made all allowances and conditions of service as may come to be conferred to a serving Chief Justice of a High Court would become applicable to a Chairperson of the State Law Commission as well. Insofar as there is no doubt that the spouse of Chief Justice of a High Court remains entitled to a family pension, where that contingency arises, there is no available reason to deny that parity to the spouse of a Chairperson of the State Law Commission either. To accept the objection being raised by the State would be to curtail the plain effect of law arising from legislation by reference made both under Rule (4)5 of the Rules and Rule 14 of the Rules.

35. Thus in our view, in the first place 'pension' payable to a Chairperson of a State of Law Commission necessarily includes within it the 'family pension' that may become payable to the spouse of such Chairperson, if that contingency arises. Alternatively, even if 'family pension' were not included in the term 'pension' payable to the Chairperson of the State Law Commission, that entitlement would arise by virtue of Rule 14 of

the Rules read with the Judges Act and the Judges Rules.

36. Therefore, the fact that there exists no specific/ direct provision in the Act and the Rules itself to provide for family pension to the spouse of a retired Chairperson of the State Law Commission is of no consequence. By virtue of legislation by reference made both under Rule 4(5) of the Rules and Rule 14 of the Rules, the objection being raised by the State is of no consequence.

37. The further objection that there can be only one rule for grant of 'family pension' is misconceived and it cannot be accepted. Though on principle it may not be denied that 'family pension' is not to be paid twice, yet that statutory protection exists in Rule 4(5) itself, under the proviso thereto. Once we have found that 'family pension' was included in the pension payable to the Chairperson of the State Law Commission under Section 4(5) of the Act read with Rule 4(5) of the Rules and in any case that entitlement arises by virtue of Rule 14 of the Rules read with Judges Act and the Judges Rules, it cannot be gain said that there exists no rule for payment of that 'family pension', should that contingency arise. In that event, the spouse of the petitioner may only claim 'family pension' equivalent to that payable to the spouse of a Chief Judge of the High Court. Here, we note the State does not object to computation and payment of pension to the petitioner equivalent to that payable to a retired Chief Justice of a High Court as provided under the Act and the Rules read with the Judges Act and the Judges Rules.

38. Thus, while the petitioner demitted office as a Judge of this High Court, he became entitled to receive and is receiving higher pension than payable to a retired Judge of a High Court by virtue of his having served as a Chairperson of the State Law

Commission, upon application of Section 4(5) of the Act read with Rules 4(5) of the Rules read with the Judges Act and the Judges Rules. For reasons noted above we find no reason why the spouse of the petitioner, may be treated differently, with respect to the payment of family pension, should that eventuality arise.

39. As to the reference made by the learned Additional Chief Standing Counsel to State Rules that provide for qualifying service of ten years for payment of 'family pension', we find that objection raised is wholly mis-conceived. In face of the specific statutory provision of the Act and the Rules read with the Judges Act and the Judges Rules and in view of our reasoning noted above, the entitlement to pension and 'family pension' being claimed in the present facts has no dependence on the general provisions made by the State Government for its other employees. In face of specific provision under the Act and the Rules providing for entitlement to full pension as a Chairperson of the State Law Commission-equivalent to pension payable to a retired Chief Justice of a High Court, upon completion of two years of service as Chairperson of the State Law Commission, the general rule/ principle of qualifying service of ten years has no application. No provision has been shown to us either under the Act or the Rules or otherwise as may allow us to consider that objection any further. In short, that objection has no legs to stand. It is wholly imaginary and unreal.

40. As to the further objection that the petitioner did not complete two years of service as a Chairperson of the State Law Commission and that the State Law Commission itself was abolished by the State Government, we find absolutely no merit in the same. In the first place, the petitioner did serve for the length much more than two years and second, the objection is not

available to the State in view of its admission that higher pension is being paid to the petitioner equivalent to that payable to a retired Chief Justice of a High Court as he was found entitled to it.

41. As to the further objection that the petitioner may never be entitled to claim two pensions, that case does not exist. The petitioner has never claimed two pensions. He is only receiving the differential amount of higher pension (from the State) on the principle of equivalence with a retired Chief Justice of a High Court. Same principle would govern the payment of higher 'family pension', should that contingency arise. That statutory protection is available under Rule 4(5) of the Rules, itself.

42. In view of the above, the impugned order is set aside, to the extent it denies the claim of family pension to the spouse of the petitioner. Respondent nos. 2 and 3 are directed to make necessary provision in the Pension Payment Order of the petitioner with respect to the family pension entitlement- in favour of the spouse of the petitioner in terms of the above. Also, we provide that the interest be paid to the petitioner @ 8% for the delay in computation and payment of the differential/ higher pension to the petitioner commensurate to the pension payable to a retired Chief of the High Court, from the date 11.09.2012 to date of actual payment of the differential amount. That payment may be paid within a period of three months from today.

43. Accordingly, the present writ petition is **allowed as above**. No order as to costs.

Order Date :- 16.10.2024

A Gautam

(Donadi Ramesh,J.) (S.D. Singh,J.)