

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.13125 OF 2012 (S-RES)

BETWEEN:

JUSTICE B. PADMARAJ (RETIRED)
S/O SRI. BABUTHMAL
AGED ABOUT 67 YEARS
EARLIER WORKING AS JUDGE
HIGH COURTOF KARNATAKA
SINCE RETIRED ANDR/AT
NO.1288, 13TH MAIN
JUDICIAL LAYOUT
ALLALASANDRA, GKVK POST
BANGALORE-560 065

....PETITIONER

(BY SRI. SACHIN B.S., ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY THE
SECRETARY TO GOVERNMENT
MINISTRY OF RAILWAYS
RAIL BHAVAN
NEW DELHI-110 001
2. THE RAILWAY BOARD
GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS

RAIL BHAVAN
NEW DELHI-110 001.
REPRESENTED BY ITS CHAIRMAN
...RESPONDENTS

(SRI. SHANTHI BHUSHAN, ASG FOR R1)

THIS PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE RECORDS LEADING TO THE IMPUGNED ORDERS DATED 22.02.2011 NO.2010/E(O)11/1/11 AND 01.02.2012 NO.2010/TC(RCT)/1-2 VIDE ANNEXURES-E AND G, QUASH THE ORDER DATED 22.02.2011 NO. 2010 E(O) 11/1/11 VIDE ANNEXURE-E AND ORDER DATED 01.02.2012 NO.2010/TC(RCT)/1-2 VIDE ANNEXURE-G PASSED BY THE 2ND RESPONDENT BY ISSUE OF A WRIT IN THE NATURE OF CERTIORARI AND ETC

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.06.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner, a retired Judge of this Court, has filed the present petition challenging the orders dated 22.2.2011 and 1.2.2012, wherein the second respondent rejected the petitioner's request for payment of pension and leave encashment.

2. The facts of the case are as under:

The petitioner retired as a Judge of the High Court upon reaching the age of superannuation of 62 years on 5.10.2006. Following his retirement, the petitioner was appointed as the Chairman of the Railway Claims Tribunal, where he served until reaching the age of 65 years on 5.10.2009. Upon completing his tenure as Chairman, the petitioner sought the cash equivalent of the salary for the earned leave standing to his credit, which was declined by the respondents. Additionally, the respondents denied the petitioner an additional pension on the grounds that he was already receiving a pension of Rs.40,000/- per month as a retired High Court Judge, and therefore, no further pension beyond the statutory limit of Rs.4,80,000/- per annum was payable. The respondents also refused to grant leave encashment citing that the petitioner had already availed of the maximum permissible leave encashment of 300 days upon his retirement as a High Court Judge.

3. The learned Senior Counsel for the petitioner argued that under sub-rule (3) of Rule 6 of the Railway Claims Tribunal Rules, 1989,(for short "Rules, 1989"), the petitioner is entitled to receive the cash equivalent of the salary in respect of earned leave standing to his credit. Furthermore, the counsel pointed out that sub-rule (2) of Rule 5 of the said Rules, 1989 entitles the petitioner to leave encashment not exceeding 300 days. It was contended that the earned leave encashment received upon retiring from the judiciary should not be considered in calculating the leave encashment accrued during his tenure as Chairman of the Railway Claims Tribunal. In regard to the pension, the petitioner's counsel argued that the statutory ceiling of Rs.4,80,000/- per annum is arbitrary, oppressive, and unconstitutional. It was further argued that the respondents made an error in clubbing the pensions from two distinct offices, contrary to the provisions of Rule 8(2) of Rules, 1989.

4. The respondents, in their statement of objections, argued that the petitioner had already availed of the maximum period of 300 days of leave encashment upon retiring as a High Court Judge, and hence, cannot claim leave encashment again. They cited sub-rule (3) of Rule 6 of Rules, 1989, to support their position that the petitioner is not entitled to an additional 300 days of leave encashment. Regarding the pension, the respondents contended that the petitioner's appointment as Chairman was subject to the Rules which stipulate that if a person is already drawing a pension, and if the total pension exceeds the ceiling limit of Rs.4,80,000/- per annum, no additional pension is payable for the services rendered as Chairman.

5. Heard the Senior Counsel for the Petitioner and Counsel for Respondent. Before I advert further to the issue relating to pension, I deem it necessary to extract Rule 8.

"8. Pension. (1) Every person appointed to the Tribunal as Chairman, Vice-Chairman or Member shall be entitled to pension:

PROVIDED THAT no such pension shall be payable to such person-

(i) if he has put in less than two years of service: or

(ii) if he has been removed from an office in the Tribunal under sub-section (2) of Sec. 8 of the Act.

(2) Pension under sub-rule (1) shall be calculated at the rate of four thousand seven hundred and sixteen per annum for each completed year of service and irrespective of the number of years of service in the Tribunal, the maximum pension shall not exceed Rupees twenty-three thousand five hundred and eighty, subject to the condition that the aggregate amount of pension payable under this rule, together with the amount of any pension, including Commuted portion of pension, if any, drawn or entitled to be drawn, while holding office in Tribunal shall not exceed Rupees one lakh and fifty-six thousand per annum."

6. In relation to the pension, Rule 8(2) of Rules, 1989, clearly stipulates that if a person appointed as Chairman is already drawing a pension, and the combined pension exceeds the ceiling limit of Rs.4,80,000/- per

annum, then the individual is not entitled to any additional pension for services rendered as Chairman. The Court finds that the endorsement issued by the respondents declining the petitioner's claim for additional pension is justified and does not warrant interference. The petitioner does not qualify for the pension from the Tribunal as he is already drawing pensions exceeding the Rs.4,80,000/- cap. While the petitioner's appointment is in terms of the rules, the pension entitlement is subject to the aggregate pension limit. Given the specific rule capping the total pension at Rs.4,80,000/-, the petitioner does not have a legal right to claim any pension amount beyond this limit.

7. The endorsement denying the pension strictly adheres to the rules. The rules are clear in stating that the aggregate pension should not exceed Rs.4,80,000/-. Since the petitioner does not have a legal right to claim pension beyond the specified cap, a writ of mandamus cannot be issued in this case. Mandamus is only applicable when

there is a failure to perform a legal duty which the petitioner is entitled to enforce.

8. The petitioner's claim for pension as Chairman of the Railways Tribunal is invalid as it exceeds the amended cap of Rs.4,80,000/- per annum. The denial of the pension is in strict compliance with the rules. Consequently, the petitioner cannot invoke a writ of mandamus since there is no legal right to claim pension beyond the stipulated limit. The rules governing pension entitlements must be adhered to, and the petitioner's current pension exceeds the permissible limit under these rules.

9. The Rule 6 of the Railway Claims Tribunal Act, 1987 reads as under;

"6. Leave – (1) A person, on appointment in the Tribunal as Chairman, Vice-Chairman or Member shall be entitled to leave as follows;

(i) earned leave at the rate of fifteen days for every completed year of service or a part thereof;

(ii) half pay leave on medical certificate or on private affairs, at the rate of twenty days in respect of each completed year of service and the leave salary or half pay leave shall be equivalent to half of the leave salary admissible during the earned leave;

(iii) leave on half pay can be commuted to full pay leave at the discretion of the Chairman, Vice – Chairman or Member, provided it is taken on medical grounds and is supported by a medical certificate from the competent medical authority;

(iv) extraordinary leave without pay and allowances upto a maximum period on one hundred and eighty days in one term of office.

(2) If the Chairman, Vice-Chairman or a Member is unable to enjoy full vacation on account of his occupation with the Tribunal, he

shall be entitled to add the unenjoyed period of vacation to his leave account.

Explanation – For the purpose of this sub-rule, “vacation” means vacation of thirty days in each calendar year observed by the Tribunal.

(3) On the expiry of his term of office in the Tribunal, the Chairman, Vice – Chairman or Member shall be entitled to receive cash equivalent of leave salary in respect of the earned leave standing to his credit;

(PROVIDED THAT the quantum of leave encashed under this sub-rule and proviso to sub-rule (2) of Rule 5 shall, on the commencement of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Amendment Rules, 2001, not exceed 300 days).

(4) The cash equivalent of such leave salary include dearness allowance on leave salary at the rates in force on the date of relinquishment of office in the Tribunal but shall

not include Compensatory (City) Allowance of any other allowances.”

10. Clause 3 of Rule 6 clearly indicates that a chairman or vice chairman at the time of retirement shall be eligible to receive cash equivalent of leave salary standing to his credit at the time of his retirement. This clause has a proviso which specifies the upper cap on this leave encashment as 300 days.

11. Regarding the leave encashment, the Court finds that the impugned endorsement denying leave encashment on the basis that the petitioner had already received cash equivalent for 300 days of leave upon retirement as a High Court Judge is not justifiable. Rule 6(1)(i) of the Rules, 1989, provides that a person appointed to the Tribunal as Chairman is entitled to earn leave at the rate of 15 days for every completed year of service. The petitioner, having served as Chairman for a tenure of two years and eight months, is entitled to leave encashment independently of the leave encashment

received upon retirement as a High Court Judge. Therefore, the petitioner's right to seek the cash equivalent of leave salary for earned leave standing to his credit during his tenure as Chairman cannot be denied based on the previous encashment. The denial of leave encashment is contrary to the provisions of Rule 6(1)(i) of the Rules, 1989.

12. In view of the above, the petition needs to be partly allowed. The respondents are directed to grant the petitioner leave encashment in respect of the earned leave standing to his credit during his tenure as Chairman of the Railway Claims Tribunal. This Court is of the opinion that the petitioner is entitled for grant of leave encashment in respect of the earned leave standing to his credit during his tenure as Chairman of the Railway Claims Tribunal. However petitioner is not entitled for an additional pension beyond the statutory limit of Rs.4,80,000/- per annum is liable to be rejected.

13. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The writ petition is allowed in part.

(ii) The respondents are hereby directed to calculate and disburse the leave encashment amount due to the petitioner for his tenure as Chairman of the Railway Claims Tribunal.

(iii) The petitioner's claim for an additional pension beyond the statutory limit of Rs.4,80,000/- per annum is hereby dismissed.

**Sd/-
JUDGE**

*alb/-