PETITIONER:
S. BANERJEE

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT24/10/1989

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
RANGNATHAN, S.
PANDIAN, S.R. (J)

CITATION:
1990 AIR 285 1989 SCR Supl. (1) 562
1989 SCC Supl. (2) 486 JT 1989 (4) 547
1989 SCALE (2)941

ACT:
Central Civil Services (Pension) Rules, 1972: Rule 5(2) and 48A--Supreme Court employee--Permitted voluntary retirement with effect from January 1, 1986--Whether entitled to claim benefit of para 17.3 of Report of Fourth Central Pay Commission.

HEADNOTE:
Paragraph 17.3 of Chapter 17, Part II of the Report of the Fourth Central Pay Commission entitled Government employees retiring during the period January 1, 1986 to September 30, 1986 to consideration of the entire dearness allowance drawn by them upto December 31, 1985 as pay for pensionary benefits. Rule 5(2) of the Central Civil Services (Pension) Rules, 1972 permits the day on which a Government servant retires from service to be treated as his last working day. The proviso thereto, however, states that in the case of a Government servant who retires voluntarily under Rule 48-A the date of retirement shall be treated as a non-working day.

The petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court under the provisions of Rule 48-A of the Rules with effect from the forenoon of January 1, 1986 by an order dated December 6, 1985. His claim to the benefit of paragraph 17.3 was not acceded to.

In the writ petition it was contended for the respondents that as in view of the proviso to rule 5(2) of the Rules the petitioner was not entitled to the salary for the day of his retirement, he was not entitled to the benefit of paragraph 17.3.

Allowing the writ petition,

HELD: Under paragraph 17.3 of Chapter 17, Part II of the Report of the Fourth Central Pay Commission the benefits recommended will be available to employees retiring during the period, January 1, 1986 to September 30, 1986. In the instant case, the petitioner was permitted to retire voluntarily from the service of the

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Registry of the Supreme Court with effect from the forenoon

of January 1, 1986. The fact that under the proviso to rule 5(2) of the Rules, the petitioner will not be entitled to any salary for the day on which he actually retired has no bearing on the question as to the date of retirement. The petitioner could not be said to have retired on December 31, 1985. It has then to be said that he had retired with effect from January 1, 1986 and that is also the order of this Court dated December 6, 1985. He, therefore, comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission. [565A-E]

The respondents to calculate and pay to the petitioner within three months his pension in accordance with the recommendation of the Pay Commission as contained in paragraph 17.3. [566D]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 1155 of 1987.

(Under Article 32 of the Constitution of India).

S.P. Malik and Mrs. Lalitha Kaushik for the Petitioner.

Anil Dev Singh, R. Venkataramani, R.B. Mishra and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. The petitioner was the Additional Registrar of this Court. His normal date of retirement was March 31, 1987. He, however, sought for voluntary retirement from the service of this Court and on his application in that regard, the following order dated December 6, 1985 was communicated to him by the Registrar of this Court:

"OFFICE ORDER

The Hon'ble the Chief Justice of India has accepted the notice of Shri S. Banerjee, Offg. Additional Registrar (Permanent Deputy Registrar), seeking voluntary retirement from service under the provisions of Rule 48A of the Central Civil Services (Pension) Rules, 1972, and has permitted him to retire voluntarily from the service of the Registry of the Supreme Court of India with effect from the forenoon of January 1, 1986."

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It is clear from the order extracted above that the petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of January 1, 1986.

After the retirement of the petitioner, the Fourth Central Pay Commission (for short 'Pay Commission') gave its report recommending the revision of salaries and pension of the Government employees. It is not disputed that the above recommendations of the Pay Commission have been accepted by the Government and that the benefit thereof is also available to the employees of this Court. Paragraph 17.3 of Chapter 17 of Part II at page 93 of the Report of the Pay Commission provides as follows:

"17.3 In the case of employees retiring during the period January 1, 1986 to September 30, 1986, Government may consider treating the entire dearness allowance drawn by them up to December 31, 1985 as pay for pensionary benefits."

The petitioner claimed the benefit of the recommendation of the Pay Commission as contained in the said paragraph

17.3, but it was not allowed on the ground that he did not, as he was not entitled to, draw salary for January 1, 1986 in view of the proviso to rule 5(2) of the Central Civil Service (Pension) Rules, 1972, hereinafter referred to as 'the Rules'. Rule 5(2) reads as follows:

> "5(2). The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day.
>
> Provided that in the case of a Government servant who is retired pre-maturely or who retires voluntarily under clause (j) to (m) of Rule 56 of the Fundamental Rules or Rule 48 (or Rule 48-A) as the case may be, the date of retirement shall be treated as a non-working day."

At the hearing of the writ petition, it has also been vehemently urged on behalf of the respondents that as in view of the proviso to rule 5(2) of the Rules, the date of retirement of the petitioner should be treated as a non-working day or, in other words, as the petitioner was not entitled to the salary for the day of his retirement, he was not

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entitled to the benefit of the recommendation of the Pay Commission as contained in paragraph. 17.3 of the report extracted above.

Under paragraph 17.3, the benefits recommended will be available to employees retiring during the period, January 1, 1986 to September 30, 1986. So the employees retiring on January 1, 1986 will be entitled to the benefit under paragraph 17.3. The question that arises for our consideration is whether the petitioner has retired on January 1, 1986. We have already extracted the order of this Court dated December 6, 1985 whereby the petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of January 1, 1986. It is true that in view of the proviso to rule 5(2) of the Rules, the petitioner will not be entitled to any salary for the day on which he actually retired. But, in our opinion, that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on December 31, 1985? The answer must be in the negative. Indeed, Mr. Anti Dev Singh, learned counsel appearing on behalf of the respondents, frankly conceded that the petitioner could not be said to have retired on December 31, 1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on December 31, 1985. Then it must be held that the petitioner had retired with effect from January 1, 1986 and that is also the order of this Court dated December 6, 1985. It may be that the petitioner had retired with effect from the forenoon of January 1, 1986 as per the said order of this Court, that is to say, as soon as January 1, 1986 had commenced the petitioner retired. But, nevertheless, it has to be said that the petitioner had retired on January 1, 1986 and not on December 31, 1985. In the circumstances, the petitioner comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission.

After the conclusion of the hearing of the writ petition, an additional affidavit purported to have been affirmed by Mr. P.L. Sakarwal, the Director (Justice) of the Department of Justice. In paragraph 8 of the affidavit the

deponent has craved leave of this Court to file this additional affidavit. It does not appear from the copy of the purported additional affidavit whether it has been affirmed or not inasmuch as no date of affirmation has been mentioned therein. Be that as it may, a photocopy of the Office Memorandum dated April 14, 1987 of the Ministry of Personnel, Public Grievances and Pensions, Department of Pensions & Pensioners' Welfare has been annexed. It is submitted in the additional affidavit that the pension of Government servants retiring between 1.1.1986 and 30.6.1987 is to be governed in terms of

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paragraphs 10.1, 10.2 and 11 of the said Office Memorandum. Further, it has been submitted that the petitioner had ceased to be in the employment of the Supreme Court with effect from 1.1.1986 (F.N.) and, accordingly, the said Office Memorandum is not applicable to the petitioner. Paragraph 3.1 of the Office Memorandum provides, inter alia, that the revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1.1.1986. The said Office Memorandum will, therefore, be applicable to Government servants retiring on 1.1.1986. There is, therefore, no substance in the contention that the Office Memorandum dated April 14, 1987 will not apply to the petitioner. Be that as it may, we have already held that the petitioner had retired with effect from 1.1.1986 and he comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission.

In the circumstances, the writ petition is allowed and the respondents are directed to calculate and pay to the petitioner within three months from today his pension in accordance with the recommendation of the Pay Commission as contained in paragraph 17.3 extracted above. There will, however, be no order as to costs.

P.S.S. Petition allowed.

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