PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
PRATIBHA BONNERJEA & ANR.

DATE OF JUDGMENT21/11/1995

BENCH:
AHMADI A.M. (CJ)
BENCH:
AHMADI A.M. (CJ)
PARIPOORNAN, K.S.(J)

CITATION:
1996 AIR 693 1995 SCC (6) 765
JT 1995 (8) 357 1995 SCALE (6)573

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

AHMADI, CJI

Two questions are raised in this appeal, namely, (i) the Central Administrative Tribunal had no jurisdiction to entertain the application and (ii) the Tribunal was wrong in holding that the pension admissible to the respondent as Vice-Chairman of the Tribunal had to be determined under Part I of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954, hereinafter called 'the Act'. The brief facts which we are required notice run as follows:

The first respondent was appointed a Judge of the High Court of Calcutta on 13th January, 1978 and she retired as such with effect from 16th February, 1989. Soon thereafter on 3rd March, 1989 she was appointed a Vice-Chairman of the Tribunal which post she relinquished on 16th February, 1992 on retirement. Admittedly she was drawing pension on retirement as High Court Judge. For the period between 3rd March, 1989 and 16th February, 1992 she served as the Vice-Chairman and was entitled to pension. She contended that her pension should be fixed under Part I whereas the Union's contention was that she was entitled to pension admissible under Part III of the First Schedule to the Act. As her contention was not conceded she filed O.A. No. 513 of 1992 in the Central Administrative Tribunal for relief as per her point of view. The Union raised a preliminary objection regarding jurisdiction and on merit contended that the department's point of view is unassailable. The Tribunal upheld both the contentions of the respondent and hence this appeal by special leave.

We do not propose to go into the question of jurisdiction as we deem it proper to settle the question of fixation of pension so that the first respondent is not driven from pillar to post. We will, therefore, address

ourselves to the question of pension admissible to the first respondent. We may at the outset refer to Rule 15A of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985. It reads as under:

> "15-A. Notwithstanding anything contained in rules 4 to 15 of the said rules, the conditions of service and other perquisites available to the Chairman and Vice-Chairman of the Central Administrative Tribunal shall be the same as admissible to a serving Judge of a High Court as contained in the High Court Judges (Conditions of Service) Act, 1954 and High Court Judges (Travelling Allowances) Rules, 1956."

Thus the conditions of service and other perquisites available to the Vice-Chairman shall be the same as admissible to a 'serving judge' of a High Court. A serving judge of a High Court is entitled to pension under Chapter III of the Act. Section 14 says that every Judge, shall, on retirement be paid a pension in accordance with the scale and provisions in Part I of the First Schedule, provided he is not a member of the ICS or has not held any other pensionable post under the Union or State. Section 15 provides that every Judge who is not a member of the ICS but has held any other pensionable civil post under the Union or the State, shall, on retirement be paid a pension in accordance with the scale and provisions in Part III of the First Schedule. The provisions of Part I apply to a Judge who is not a member of the ICS or has not held any other pensionable post under the Union or a State and also apply to a Judge who, being the member of ICS or having held any other pensionable civil post under the Union or a State, has elected to receive the pension payable under the said Part. On the other hand the provisions of Part III apply to a Judge who has held any pensionable post under the Union or a State but is not a member of the ICS and who has not elected to receive the pension payable under Part I. The first respondent was a direct recruit from the Bar when she was appointed a Judge of the High Court and, therefore, on her retirement she became entitled to pension under Part I of the First Schedule. There is no doubt, so far as this aspect is concerned. When she was appointed a Vice-Chairman of the Tribunal she was already drawing pension as a retired High Court Judge. Therefore, the short question is whether her case would be governed by Part I or Part III of the First Schedule when she retired as Vice-Chairman of the Tribunal. The submission on behalf of the Appellant-Union is that since the first respondent was holding a pensionable post under the Union/State at the time when she retired as the Vice-Chairman of the Tribunal, her case would be governed by Part III and not Part I of the First Schedule. The first respondent was indisputably not a member of the ICS. Was she holding a pensionable post under the Union/State at the time when she retired as the Vice-Chairman of the Tribunal? If she was holding a pensionable post under the Union/State, there can be no doubt that she would not be entitled to pension under Part I but would be entitled to pension under Part III of the First Schedule. That gives rise to the question whether a High Court Judge who is drawing pension can be said to be a person holding a pensionable post under the Union/State. If the answer is in the affirmative the first respondent would be entitled to pension under Part III, but if the answer is in the negative, she would be

entitled to pension under Part I of the First Schedule to the Act. That is the moot question for consideration under Rule 15A, extracted earlier. The pension has to be the same as admissible to "a serving Judge of a High Court under the Act and the Rules made thereunder".

Does a Judge of the High Court hold a post under the Union or a State? If yes, the first respondent having retired as a Judge of the High Court and having been drawing pension at all material times would not be entitled to fixation of pension under Part I of the First Schedule. If, however, it is found that a High Court Judge does not hold a post under the Union or a State, Part I would squarely be attracted as he or she would be outside thescope of Part III. Therefore, what we have to determine is whether the first respondent who was admittedly a pensioner as a retired High Court Judge could be said to be a person holding a pensionable post under the Union or a State.

The question to be considered is whether under the Constitution there is, strictly speaking, a relationship of master and servant between the Government and a High Court Judge? In order to answer this question a few provisions of the Constitution need to be noticed. Firstly, Article 50 enjoins that the State should take steps to separate the judiciary from the executive. Next, we may notice Chapter V in Part VI of the Constitution which concerns High Courts in the States. Article 214 provides that there shall be a High Court for each State or a group of States. Article 217 posits that every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, etc., who shall hold office until he attains the age of 62 years. A Judge once appointed can vacate office by tendering his resignation or on his elevation to the Supreme Court or transfer to another High Court or on being removed from office by the President in the manner provided by Article 124(4), i.e. after an address by each House of Parliament supported by a majority of the total membership of that House and by majority of not less than two-thirds of the members present and voting has been presented to the President. The removal can be on the ground of proved misbehaviour or incapacity. Article 219 expects every person appointed to be a Judge of the High Court to make and subscribe an oath or affirmation according to the form set out in the Third Schedule. That form is Form VIII which inter alia requires the Judge to swear in the name of God or to solemnly affirm that he would truly and faithfully and to the best of his ability and judgment perform his duties without fear or favour, affection or illwill. These words clearly indicate that the judicial function must be discharged without being influenced by extraneous considerations. Independence and impartiality are the two basic attributes essential for a proper discharge of judicial functions. A Judge of a High Court is, therefore, required to discharge his duties consistently with the conscience of the Constitution and the laws and according to the dictates of his own conscience and he is not expected to take orders from anyone. Since a substantial volume of litigation involves Government interest, he is required to decide matters involving Government interest day in and day out. He has to decide such cases independently and impartially without in any manner being influenced by the fact that the Government is a litigant before him. In order to preserve his independence his salary is specified in the Second Schedule, vide Article 221 of the Constitution. He, therefore, belongs to the third organ of the State which is

independent of the other two organs, the Executive and the Legislature. It is, therefore, plain that a person belonging to the judicial wing of the State can never be subordinate to the other two wings of the State. A Judge of the High Court, therefore, occupies a unique position under the Constitution. He would not be able to discharge his duty without fear or favour, affection or illwill, unless he is totally independent of the executive, which he would not be if he is regarded as a Government servant. He is clearly a holder of a constitutional office and is able to function independently and impartially because he is not a Government servant and does not take orders from anyone. That is why in Union of India Vs. Sakalchand Himatlal Sheth (1977) 4 SCC 193 Chandrachud J., said in paragraph 32 at page 224 'the rejection of Mr. Seervai's argument..... should not be read as a negation of his argument that there is no master and servant relationship between the Government and High Court Judges." Bhagwati J. in his separate judgment said the same thing in paragraph 49 when he observed: 'a Judge of the High Court is not a Government servant, but he is the holder of a constitutional office'.

From the scheme of the Constitution to which we have adverted briefly it is obvious that the Constitution-makers were evidently keen to ensure that the judiciary was independent of the executive. An independent, impartial and fearless judiciary is our constitutional creed. The Constitution has tried to insulate the judiciary from outside influence both from the Executive and the Legislature. The provisions of Chapter VI in Part V of the Constitution dealing with courts below the State High Court also show that the constitution-makers were equally keen to insulate even the subordinate judiciary. Articles 233 to 237 have, therefore, provided a wholly different mode of selection and appointment of Judicial Officers at the grass roots level and upto the District Courts from the one provided for other civil posts. No doubt the initial appointment has to be made by the Governor of the State, albeit after selection as provided in that chapter, but thereafter the posting and promotion, grant of leave, etc., is with the High Court and not the Government. Thus the Judicial Officers belonging to the subordinate courts are placed under the protective umbrella of the High Court. We have already pointed out the provisions dealing with the appointment of High Court Judges. The entire procedure outlined for their appointment is totally different from that provided for other services. That is because the constitution-makers were conscious that the notion of judicial independence must not be diluted. If the relationship between the Government and the High Court Judge is of master and servant it would run counter to the constitutional creed of independence for the obvious reason that the servant would have to carry out the directives of the master. Since a High Court Judge has to decide cases brought by or against the Government day in and out, he would not be able to function without fear or favour if he has to carry out the instructions or directives of his master. The whole concept of judicial independence and separation of judiciary from the executive would crumble to the ground if such a relationship is conceded. High Court Judges would not be true to their oath if such a relationship is accepted. That is why not only Judges but even the staff members are insulated from executive influence. Article 229 clearly provides that appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer as

he may direct. Even the conditions of service of officers and servants shall be such as may be prescribed by the Chief Justice or his nominee authorised by him to make rules; the approval of the Governor is necessary only if the rules relate to salaries, allowances, leave or pension. This provision also shows that officers and servants of the High Court are also under the exclusive control of the Chief Justice and not the Government. If that be the relationship between the officers and servants of the High Court vis-a-vis the Government, it is difficult to imagine a master and servant relationship between the Government and Judges of the High Court. We have, therefore, no hesitation in coming to the conclusion that the relationship between the Government and High Court Judges is not of master and servant. They cannot be said to be holding a post under the Union/State.

For the above reasons we are of the view that the Central Administrative Tribunal was right in the view it took in this behalf. We, therefore, dismiss this appeal with costs.