



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15018 OF 2023

**BASAVRAJ
GURAPPA
PATIL**

Pushpa w/o. Virendra Ganediwala

..... Petitioner

Vs.

High Court of Judicature of Bombay & Ors. Respondents

Mr. Sunil Manohar, Senior Advocate with Mr. Nikhil Sakhardande, Senior Advocate and Mr. Pralhad Paranjape, Mr. Ankit B. Rathod, Mr. Onkar Bajaj, Mr. Atharva S. Manohar i/b. Anshu Agrawal for the petitioner

Mr. Virendra Tulzapurkar, Senior Advocate a/w.Mr. Rahul Nerlekar for respondent No.1 to 3

Mrs. Neha S. Bhide, Govt. Pleader with Mr. O. A. Chandurkar, Additional Govt. Pleader and Mrs. G. R. Raghuwanshi, AGP for respondent Nos.5 and 6 – State

**CORAM: ALOK ARADHE, CJ. &
BHARATI DANGRE, J.**

**RESERVED ON : MARCH 7, 2025
PRONOUNCED ON : MARCH 13, 2025**

JUDGMENT: (PER : CHIEF JUSTICE)

1. Rule. Rule is made returnable forthwith. By consent of the learned Counsel for the parties, the writ petition is heard finally.

2. In this petition, the petitioner has assailed the communication dated 2nd November 2022 issued by the Registrar (Original Side), High Court, Bombay, by which the petitioner, who was a former Judge of this Court, has been informed that she is

not eligible for pension. The petitioner also seeks a direction to respondents to fix and grant pensionary benefits to the petitioner w.e.f. 14.02.2022 along with interest.

(i) **FACTS :-**

3. Facts giving rise to this petition, in nutshell, are that the petitioner was a practicing advocate. The petitioner, on 26th October 2007 was appointed as a District Judge. The collegium of the Supreme Court on 16.01.2019 recommended the name of the petitioner for appointment as a Judge of Bombay High Court. On the basis of the aforesaid recommendation, a Notification dated 8th February 2019 was issued under Article 224(1) of the Constitution of India. The petitioner was elevated as an Additional Judge of the Bombay High Court for a period of two years with effect from the date she assumed charge. The petitioner assumed charge as an Additional Judge of the High Court, Bombay on 13th February 2019. The Central Government issued a Notification dated 12th February 2021 under Article 224(1) of the Constitution of India by which the tenure of the petitioner as Additional Judge of Bombay High Court was extended w.e.f. 13th February 2021 for a period of one year. The tenure of the petitioner as Additional Judge was to expire on 12th February 2022. The petitioner tendered resignation on 11th February 2022. The Central Government, Ministry of Law and Justice, Government of India, by Notification dated 14th March 2023 notified the resignation of the petitioner.

4. The petitioner submitted an application on 17th February

2022 to the Registry of this Court in which she claimed pension on account of having rendered services as an Additional Judge of this Court for a period of 2 years 11 months and 29 days and as District Judge for a period of 11 years 3 months and 18 days. The petitioner, by communication dated 2nd November 2022 was informed by the Registry of this Court that she is not entitled to claim pension on the basis of the opinions given by the following namely (1) Under Secretary to the Government of India, Ministry of Law & Justice, (Department of Justice), New Delhi, (2) Office of the Principal Accountant General (A & E)-II Maharashtra, Nagpur (3) Legal Advisor-And-Joint Secretary, Government of Maharashtra, Law & Judiciary Department, Mantralaya, Mumbai and (4) the Advocate General of Maharashtra State.

5. The petitioner, on 2nd January 2023 submitted an application under the Right to Information Act, 2005 (**2005 Act**) seeking copies of the information mentioned in the communication dated 2nd November 2022 sent by the registry of this Court. The Public Information Officer of this Court, on 10th January 2023 supplied the copies of the information referred to in the application dated 2nd November 2022, to the petitioner. The petitioner also sought an information under the 2005 Act seeking names of the former Judges of this Court who were being paid pension despite having tendered their resignation. The petitioner, thereupon, by a reply dated 18th March 2023 was informed that five former Judges of this Court, who had tendered resignation, are being paid pension. In the aforesaid factual background the petitioner has approached this Court seeking the relief as stated supra.

(ii) **SUBMISSIONS:-**

6. Learned senior counsel for the petitioner submitted that a Judge holds a constitutional office and not a post under the Government and therefore, a claim for pension has to be decided in the light of the constitutional as well as statutory provisions. It is contended that the general principles of service jurisprudence cannot be made applicable for deciding the claim of pension of a former Judge of this Court. Our attention has been invited to various provisions of the High Court Judges (Salaries and Conditions of Services) Act, 1954 (**1954 Act**). It has been contended that the expression "retirement" used in Section 14 and 15 of the Act of 1954 cannot be construed in a narrow and limited sense so as to only mean retirement by way of superannuation and in no other manner. It is further submitted that the expression "retirement" in Sections 14 and 15 of the Act is used broadly so as to enable all modes of retirement including superannuation and resignation. It is contended that no discrimination can be made between an additional Judge and a permanent Judge of a High Court for payment of pension on the basis of source of appointment. It is submitted that such a distinction would be contrary to the express language of the Act, in particular, Section 2(1)(g) of the 1954 Act. It is urged that the opinion of the learned Advocate General is based on the decision of the Supreme Court in ***UCO Bank & Ors. Vs. Sanwar Mal***¹ in

¹ **(2004) 4 SCC 412**

which service Rule contained a specific provision that past services of the Government servant would stand forfeited in case he resigns from the post. It is pointed out that opinion rendered by learned Advocate General does not take into account the provisions of the 1954 Act. In support of his submission that the expression "retirement" includes "resignation", reliance has been placed on decisions of the Supreme Court in ***Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.***², ***J.K. Cotton Spg. & Wvg. Mills Ltd. v. State of U.P.***³, ***Moti Ram v. Param Dev***⁴, ***Union of India and others Vs Pratibha Bonnerjea and another***⁵, ***Union of India v. Syad Sarwar Ali***⁶, ***P. Ramakrishnam Raju Vs Union of India and others***⁷, ***Union of India, Ministry of Law & Justice Vs Justice (Retd) Raj Rahul Garg (Raj Rani Jain) and others***⁸ and a division bench of this Court in ***Commissioner of Income Tax, Bombay Vs. D. P. Malhotra***⁹.

7. On the other hand, learned Senior counsel for respondent Nos.1 to 3 submitted that the resignation by a High Court Judge results in forfeiture of claim of pension. It is submitted that the expression "retirement" used in Section 14 and 15 of the Act of 1954 does not include resignation. It is contended that the word

² (1984) 3 SCC 369

³ (1990) 4 SCC 27

⁴ (1993) 2 SCC 725

⁵ (1995) 6 SCC 765

⁶ (1998) 9 SCC 426

⁷ (2014) 12 SCC 1

⁸ 2024 SCC OnLine SC 321

⁹ 1997(3) Mah.LJ 903

“resignation” connotes unwillingness to continue in employment which cannot be equated with “retirement”. It is contended that the decisions relied upon by the petitioner have no application to the facts and circumstances of the case and that the decision in ***Union of India Vs Raj Rahul Garg*** (supra) only deals with the issue namely whether any distinction can be made between the Judges of the High Court on the basis of source of recruitment.

8. Learned Government Pleader for respondent Nos.5 and 6 has adopted the opinion given by learned Advocate General for the purpose of her submissions.

(iii) **RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS:**

9. Article 217 of the Constitution of India deals with “Appointment and conditions of the office of a Judge of a High Court” whereas Article 221 deals with “Salaries, etc., of Judges”. Articles 217 and 221 of the Constitution of India are extracted below for the facility of reference.

“217. Appointment and conditions of the office of a Judge of a High Court. -

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointments Commission referred to in article 124-A and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:

Provided that-

(a) A Judge may, by writing under his hand addressed to the President, resign his office;

(b) A Judge maybe removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(c) The office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and-

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession;

Explanation. - For the purposes of this clause-

(a) In computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(aa) In computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period

before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final."

221. Salaries, etc., of Judges.-

(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

10. The 1954 Act is an Act enacted by the Parliament to regulate salaries and certain conditions of service of the Judges of High Courts. Section 2(b) defines expression "Acting Judge", Section 2(d) defines the expression "Additional Judge", Section 2(g) defines the expression "Judge" whereas Section 2(gg) defines the word "Pension". The aforesaid Sections 2(b), 2(d), 2(g) and 2(gg) are extracted below for the facility of reference:

2. Definition: - (1) *In this Act, unless the context*

otherwise requires-

(a)

(b) "Acting Judge" means a person appointed to act as a Judge under clause (2) of Article 224 of the Constitution.

(c)

(d) "Additional Judge" means a person appointed as an additional Judge under clause (1) of Article 224 of the Constitution.

(e)

(f)

(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;

11. Section 14 of the 1954 Act deals with "Pension payable to Judges" whereas Section 15 deals with "Special provision for pension in respect of Judges who are members of service". Section 14 and 15 are extracted below for the facility of reference:

"14. Pension payable to Judges: - *Subject to the provisions of this Act, every Judge shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part I of the First Schedule:*
Provided that no such pension shall be payable to a Judge unless-

(a) he has completed not less than twelve years of service for pension; or

(b) *he has attained the age of sixty two years, or and, in the case of a Judge holding Office on the 5th day of October, 1963, sixty years or;*

(c) *his retirement is medically certified to be necessitated by ill-health.*

Provided further that if a Judge 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 in the Union or a State, the pension payable under this Act shall be in lieu of, and not in addition to, that pension.

Explanation – In the section “Judge” means a Judge who has not held any other pensionable post under the Union or a State and includes a Judge who having held any other pensionable post under the Union or a State has elected to receive the pension payable under part I of the First Schedule.

15. Special provision for pension in respect of Judges who are members of service: -

(1) *Every Judge.*

(a) *(Omitted by Act No. 13 of 2016)*

(b) *Who has held any other pensionable civil post under the Union or State, shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part II of the First Schedule;*

Provided that every such Judge shall elect to receive the pension payable to him either under Part I of the First Schedule or, Part III of the First Schedule, and the pension payable to him shall be calculated accordingly.

(2) *Notwithstanding anything contained in sub-section (1), any Judge to whom that sub-section applies and who is in service on or after the 1st day of October, 1974, may, if he has elected under the proviso to that sub-section to receive the pension payable to him under Part III of the First Schedule before the date on which the High Court Judges*

(Conditions of Service) Amendment Act, 1976, receives the assent of the President cancel such election and elect a fresh to receive the pension payable to him under Part I of the First Schedule and any such Judge who dies before the date of such assent shall be deemed to have elected afresh to be governed by the provisions of the said Part I if the provisions of that Part are more favourable in his case."

12. Thus, on perusal of Section 14 it is evident that a Judge on his retirement is entitled to pension subject to following conditions:

(a) he has completed not less than twelve years of service for pension; or

(b) he has attained the age of sixty two years, or and, in the case of a Judge holding Office on the 5th day of October, 1963, sixty years or;

(c) his retirement is medically certified to be necessitated by ill-health.

13. Section 15 deals with special provision for pension in respect of Judges who are members of service. Section 15 provides that every Judge who has held any other pensionable civil post under the Union or State, shall on his retirement, be paid a pension in accordance with the scale and provisions in Part III of the First Schedule.

(iv) **ANALYSIS:-**

14. The solitary issue which arises for consideration in this petition is whether the expression "retirement" used in Section 14 and 15(1) of the 1954 Act includes resignation as well. The expression 'retirement' has not been defined under the 1954 Act.

It is well settled that when a word is not defined in the Act, it may be permissible to refer to the dictionary to find out the meaning of the word as is understood in common parlance. (See ***CIT Vs Venkateswara Hatcheries Pvt. Ltd. [1999(3) SCC 632]***). Therefore, the meaning of expression 'retirement' as understood in common parlance has to be taken into account while ascertaining its meaning and it is permissible to refer to the dictionary. The expression 'retirement' has been defined in Black's Law Dictionary (Ninth Edition Pg.1431) as follows:

'Retirement'- 1. Termination of one's own employment or career, esp. upon reaching a certain age or for health reasons; retirement may be voluntary or involuntary. 2. Withdrawal from action or for privacy <Carol's retirement to her house by the lake>. 3. Withdrawal from circulation; payment of a debt<retirement of a series of bonds>.

The expression 'retire' has been defined in Legal Thesaurus by William C. Burton (Regular Edition Pg 453) in the context of employment to mean to 'conclude a career'. It has the following other meanings:

"Abdicate, demit, drop out, give notice, give up office, give up work, leave, quit, relinquish, resign, stand aside, take leave, tender one's resignation, vacate".

Similarly, in the same Thesaurus the following meanings appear of the word 'resign':

"abandon, abdicate, abire, abjure, capitulate, cease work,

cede, cedere, demit, depart, deponere, desist from, disclaim, divest oneself of, drop out, forgo, forsake, give notice, give up, leave, quit, reject, relinquish, renounce, repudiate, retreat, stand aside, step down, surrender, tender one's resignation, vacate, withdraw, yield."

15. Thus, it is evident that the word 'retirement' is a word of wide import. The same means the conclusion of a career. One of the meanings of the word 'retire' is to 'resign'.

16. It is a well settled rule of construction that to ascertain Legislative intent, all the constituent parts of the statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself. (***See Poppatlal Shah Vs State of Madras [AIR 1953 SC 274]***). It is equally well settled rule of statutory interpretation that the interpretation of the provisions must depend on the text and context, as the same word may mean one thing in one context and another in different context. (See ***Renaissance Hotel Holdings Vs B. Vijay Sai and others [2022 (5) SCC 1]***).

17. In ***D. S. Nakara Vs Union of India***¹⁰ the Supreme Court has held that the right to pension is included in right to life under Article 21 of the Constitution of India.

18. From careful scrutiny of Section 14 and 15 of 1954 Act, it is evident that the entitlement of a judge to pension is on his

¹⁰ AIR 1983 SC 130

retirement and the same includes an involuntary act as well inasmuch as retirement on account of ill-health is as contemplated by clause 14(c) of 1956 Act is an involuntary act. The resignation as well as the retirement, both result in the conclusion of the service career. In fact the resignation is one of the modes of retirement from service and is a voluntary act. In case the Legislature intended to confine the benefits of pension only to a Judge who has retired on superannuation, it would have expressly said so. The word 'retirement' in Sections 14 and 15 of 1954 Act has not been used in a restricted sense to mean retirement on superannuation only.

19. Thus, by taking into account the meaning of expression 'retirement' in common parlance, as well as text and context in which expression 'retirement' is used in Section 14 and Section 15(1) and the object of 1954 Act it is evident that the expression 'retirement' in Section 14 and 15(1) of 1954 Act has been used in a broad sense and it includes the case of retirement on resignation as well. The criteria of entitlement to pension is retirement and mode of retirement for pension is irrelevant for the purpose of Section 14 and 15(1) of 1954 Act.

20. In so far as the reliance placed by the State Government on the opinion of learned Advocate General is concerned, suffice it to say that the opinion of the learned Advocate General is based on the decision of Supreme Court in ***UCO Bank Vs Sanwar Mal*** (supra) in which service rule contained a specific provision that past services of the employee would stand forfeited in case he

resigns from the post. In 1954 Act, there is no such provision. It is noteworthy that the learned Advocate General has not taken into account the provisions of 1954 Act. Therefore, the opinion rendered by the learned Advocate General is of no assistance to the State Government in the facts and circumstances of the case. Similarly, the contention urged on the behalf of the other respondents that the expression 'retirement' does not include the resignation for the reasons mentioned in preceding paragraphs does not deserve acceptance.

21. It is also pertinent to note that five former Judges of this Court who had tendered their resignations are being paid the pension. However, no explanation worth name has been offered on behalf of the respondents for taking a different stand in the case of the petitioner alone. It is also pertinent to note that the division bench of this Court in ***Nandkishor Digambar Deshpande Vs High Court of Judicature of Bombay***¹¹ though did not expressly deal with the issue involved in the writ petition, yet concluded that the Judge who demitted his office as an additional Judge of this Court is entitled to pension.

22. In view of the preceding analysis, the inevitable conclusion is that the expression 'retirement' used in Section 14 and 15(1) of 1954 Act includes resignation as well.

23. In the result, the impugned order dated 02.11.2022 passed by the Registrar (Original Side), High Court, Bombay is quashed and set aside. The petitioner is held entitled to pension w.e.f. 14.02.2022. The respondents are directed to fix and grant

¹¹ 2017 SCC Online Bom 9686

pensionary benefits to the petitioner from 14.02.2022 within a period of two months from today along with interest at the rate of 6% per annum.

24. In the result, the petition is allowed.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)