

GOVT. OF NCT OF DELHI & OTHERS
v.
ALL INDIA YOUNG LAWYERS ASSOCIATION (REGD.) &
ANOTHER
(Civil Appeal No. 498 of 2009)

JANUARY 29, 2009

**[K.G. BALAKRISHNAN CJ. AND P. SATHASIVAM &
J.M. PANCHAL, JJ.]**

Delhi Higher Judicial Service Rules, 1970:

Rule 26 – Direct recruits – Weightage for practice in the Bar, for the purpose of pension and other retiral benefits – Held: It is appropriate that 10 years of practice at the Bar or such other number of years whichever is less could be added while computing pension and other retiral benefits – However, such direct recruit should actually work for minimum of ten years in the Delhi Higher Judicial Service and then retire to be eligible for minimum pension – Government of NCT of Delhi to suitably insert Rule 26(B) to the Rules – Service Law – Pension – Weightage.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 498 of 2009.

From the Judgment and Order dated 24.2.2006 of the High Court at Delhi at New Delhi in W.P.No. 21211 of 2005.

Brijender Chahar, Sadhna Sandhu, Om Prakash and Anil Katiyar for the Petitioner.

Surya Kant, Shailja Sinha, Maninder Singh, Gaurav Sharma and Sumeet Bhatia for the Respondents.

The following Order of the Court was delivered:

ORDER

1. Leave granted.
2. This appeal has been filed by the Government of NCT

- A of Delhi against the judgment of the High Court of Delhi dated 24th February, 2006 passed in Writ Petition No. 21211 of 2005, whereby the High Court has allowed the writ petition filed by respondent No.1 herein.

Facts:

- B 3. Respondent No.1 preferred a Writ Petition being W.P.(C) No.21211 of 2005 before the High Court of Delhi, *inter alia*, seeking a mandamus to the appellants herein that the actual period of practice at the Bar subject to a maximum of 15 years, should be added to the total pensionable service while computing the pension and other retiral benefits in the case of a direct recruitee to the Delhi Higher Judicial Service. The High Court, after hearing both sides, by its impugned judgment held that the prayers made by the writ petitioner (respondent No.1 herein) were reasonable and directed that the Rule 26(B) be inserted in the Delhi Higher Judicial Service Rules, 1970 (for short 'the Rules') and weightage of fifteen years of practice or such other number of years of practice at the Bar whichever is less be given to the direct recruits while computing their pension and other retiral benefits, thereby allowed the writ petition.

4. Aggrieved by the said order, this appeal has been filed by the Government of NCT of Delhi challenging the aforesaid decision of the Delhi High Court.

- F 5. We have heard learned counsel for the State and learned counsel for the Lawyers Association and High Court of Delhi.

- G 6. In the Delhi Higher Judicial Service, direct recruitment to 25% of posts are made from amongst the members of the Bar who have completed seven years practice at the Bar. The minimum age for entry is 35 years and the maximum age is 45 years. The main contention of the writ petitioner (respondent No.1 herein) before the High Court was to include the fifteen years' practice at the Bar. If a candidate join sat the age of 35 years and retires at the age of 60 years, if not elevated to

the Bench of the High Court, he would not be able to get full pension as for getting full pension one should have 33 years of service whereas the total service rendered by a member who joins at the age of 35 years will be 25 years of service. The High Court, on the administrative side, brought this fact to the notice of the government by writing a letter in the year 1987. Though repeated reminders were sent to the government, no decision was taken by the Government till the end of 2005 and only on 02nd February, 2006 by a letter, Government has indicated that it was agreeable to give weightage of 7 years of practice at the Bar while computing the pension and other retiral benefits for direct recruits.

7. Learned counsel appearing for the State contended that the reason why government has agreed to give weightage of 7 years practice at the Bar is that because in the case of direct recruitments to the Delhi Higher Judicial Service, a member should have seven years' practice at the Bar and that is why Government thought it fit to give weightage of seven years. Learned counsel appearing for the first respondent-association submitted that High Court was right in directing the government to give weightage of fifteen years' practice at the Bar while computing pension and other retiral benefits because otherwise most of the members of the Delhi Higher Judicial Service would not be able to get full or adequate/reasonable pension at the time of retirement. It is also submitted that better conditions of service should be made available to the persons who are direct recruitees from the Bar otherwise the best talent would not be attracted for selection. Learned counsel appearing for respondent No.1-High Court of Delhi has also brought to our notice the fact that the request was made by the High Court in the year 1987 and despite repeated reminders, Government has acceded to the request only in the year 2006 by its letter dated 02nd February, 2006. It is also brought to our notice by the learned counsel appearing for respondent No.2 that in the States of Punjab, Haryana and Gujarat, weightage of 10 years' practice at the Bar is given in the case of direct recruits while computing pension and other retiral benefits.

A 8. We have considered the various contentions raised
before us. Learned counsel appearing for the State vehemently
contended that only the period of seven years' practice at the
Bar is to be added because the minimum qualification to enter
B years' practice at the Bar. That reason, by itself, does not
appear to be justifiable as the total period of service for getting
maximum or full pension is 33 years as per the general rules
of the Government of Delhi. Learned counsel for the State
submitted that if 15 years' practice at the Bar is added, then
C there is an apprehension that after joining the Delhi Higher
Judicial Service and working for a shorter period, members
may quit the job because even after working for a shorter
period, they will get the proportionate pension if their past
practice of 15 years at the Bar is added.

D 9. Having regard to the facts of the case and having heard
learned counsel for the parties, we deem it appropriate that 10
years practice at the Bar or such other number of years
whichever is less, could be added while computing pension and
other retiral benefits in the case of a direct recruit to the Delhi
E Higher Judicial Service. We order accordingly.

10. Insofar as apprehension of learned counsel for the
State is concerned, we make it clear that weightage of 10
years' practice at the Bar will be given only if the direct recruit,
who joins the Delhi Higher Judicial Service, actually works for
F minimum ten years in the Delhi Higher Judicial Service and
then retire so as to enable them to get reasonable/adequate
pension at the time of retirement because as per general rules
to be eligible for minimum pension a person should have
completed at least ten years of service. Government of NCT
G of Delhi is directed to suitably insert Rule 26(B) in the Delhi
Higher Judicial Service Rules, 1970.

The Appeal is partly allowed in the aforesaid terms. No
costs.

H G.N.

Appeal partly allowed.