

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18<sup>TH</sup> DAY OF JUNE, 2019

PRESENT



THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

WRIT APPEAL NO. 1537/2019 (S-RES)

**BETWEEN:**

DR. JUSTICE K. BHAKTHAVATSALA  
AGED ABOUT 66 YEARS  
CHAIRMAN  
KARNATAKA STATE ADMINISTRATIVE TRIBUNAL  
7<sup>TH</sup> FLOOR, KANDAYA BHAVAN  
K.G. ROAD  
BENGALURU - 560009

... APPELLANT

(BY SRI D.L.N. RAO, SENIOR COUNSEL A/W  
SRI M.S. RAJENDRA FOR M/S. HOLLA & HOLLA,  
ADVOCATES)

**AND:**

1. THE SENIOR ACCOUNTS OFFICER  
PRINCIPAL ACCOUNTANT GENERAL (A & E) KARNATAKA,  
P.B. NO. 5329  
PARK HOUSE ROAD  
BENGALURU - 560001

2. GOVERNMENT OF KARNATAKA  
REPRESENTED BY CHIEF SECRETARY  
VIDHANA SOUDHA  
BENGALURU - 560001
3. UNION OF INDIA  
DEPARTMENT OF PERSONNEL,  
PUBLIC GRIEVANCES AND PENSIONS  
REPRESENTED BY ITS SECRETARY  
ADMINISTRATIVE TRIBUNAL SECTION  
ROOM NO.5, THIRD FLOOR  
LOKNAYAK BHAVAN  
KHAN MARKET  
NEW DELHI - 110003
4. THE REGISTRAR  
KARNATAKA STATE ADMINISTRATIVE TRIBUNAL  
KANDAYA BHAVAN, 6<sup>TH</sup> AND 7<sup>TH</sup> FLOORS  
KEMPEGOWDA ROAD  
BENGALURU - 560009

... RESPONDENTS

(BY SRI D. NAGARAJ, AGA FOR R-1 & 2;  
SRI C. SHASHIKANTHA, CGC FOR R-3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 12/04/2019 PASSED IN THE SAID CASE AND TO ALLOW WRIT PETITION NO.47821/2017 [S-RES] AND GRANT SUCH OTHER AND FURTHER RELIEFS AS THIS HON'BLE COURT MAY DEEM FIT IN THE CIRCUMSTANCES OF THE CASE, INCLUDING THE COSTS OF THIS APPEAL.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, CHIEF JUSTICE DELIVERED THE FOLLOWING:

**JUDGMENT**

The appellant is a retired Judge of this Court. By order dated 15<sup>th</sup> December 2015, he was appointed as the Chairman of the Karnataka State Administrative Tribunal (for short 'the State Administrative Tribunal') constituted in accordance with the Administrative Tribunals Act, 1985 (for short 'the said Act of 1985'). The appointment order dated 15<sup>th</sup> December 2015 itself mentions that the appellant is entitled to scale of pay of Rs.80,000/- (fixed) and that the conditions of service will be governed by the provisions of the said Act of 1985. The appellant accepted the order of appointment dated 15<sup>th</sup> December 2015, which specifies his salary and service conditions.

2. On 19<sup>th</sup> September 2018, he filed a writ petition in this Court contending that the salary of Rs.80,000/- (fixed) per month mentioned in the order of appointment dated 15<sup>th</sup> December 2015 is contrary to law. He prayed for a writ of mandamus directing the

respondents to fix his scale of pay on par with the Chief Justice of a High Court with effect from 15<sup>th</sup> December 2015 which is the date of his appointment. The second prayer in the petition was a consequential prayer for quashing the letter dated 13<sup>th</sup> September 2017 issued by the Government of India denying the benefit of salary equivalent to the salary of Chief Justice of a High Court. The learned Single Judge rejected the petition by relying upon Rule 15A of the Karnataka Administrative Tribunal (Services, Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Rules, 1986 (for short 'the Rules of 1986'). Rule 15A provides that the conditions of service and other perquisites available to the Chairman and Vice-Chairman of the Karnataka Administrative Tribunal shall be the same as admissible to a serving Judge of a High Court as provided in the High Court Judges (Conditions of Service) Act, 1954 (28 of 1954) and High Court Judges (Travelling Allowances) Rules, 1956.

3. The learned Senior Counsel appearing for the appellant has questioned the impugned order rejecting the petition filed by the appellant on various grounds. Firstly, he relied upon the Tribunal,

Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 (for short 'the said Rules of 2017'). He urged that as per the provisions of the said Rules of 2017, the Chairman of a Tribunal is entitled to fixed salary of Rs.2,50,000/- which is the salary payable to Chief Justice of a High Court. He also relied upon the definition of 'Judge' in Clause (g) of Section 2 of the High Court Judges (Salaries and Conditions of Service) Act, 1954 (for short 'the Act of 1954') which shows that the definition of 'Judge' also includes 'Chief Justice'. He submitted that therefore, though Rule 15A of the said Rules of 1986 provides that the Chairman of the Administrative Tribunal shall be entitled to salary of a serving Judge, he is entitled to salary of serving Chief Justice of a High Court. He relied upon the observations made by the Apex Court in the case of **S.P.SAMPATH KUMAR vs UNION OF INDIA AND OTHERS**<sup>1</sup> to the effect that the role played by the Chairman of the State Administrative Tribunal is virtually the role of the Chief Justice of a High Court. Lastly, he relied upon the order dated 12<sup>th</sup> June 2019 appointing a retired

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<sup>1</sup> (1987) 1 SCC 124

Judge of this Court as a Judicial Member of the State Administrative Tribunal. He submitted that Clause (2) of the said order indicates that the said Rules of 2017 have been applied to a Member of the State Administrative Tribunal subject to the final disposal of the cases pending in the Apex Court. He would, therefore, submit that the appellant is entitled to salary equivalent to the salary of Chief Justice of a High Court. He also relied upon the clarificatory letter dated 13<sup>th</sup> November 2017 issued by the Department of Personnel and Training of the Ministry of Personnel, Public Grievances and Pensions.

4. We have carefully considered the submissions. It is not in dispute that the State Administrative Tribunal has been constituted under the provisions of the said Act of 1985. Chapter II of the said Act of 1985 deals with the establishment of Administrative Tribunals and Benches thereof. Section 10 of the said Act of 1985 provides that the salaries and allowances payable to and the other terms and conditions of service of the Chairman and other Members shall be such as may be prescribed by the Central Government. The work "prescribed" is defined in clause (c) of Section 2 of the said

Act of 1985 as prescribed by the rules made under the said Act of 1985. Clause (c) of sub-section (2) of Section 35 of the said Act of 1985 confers a rule making power on the Central Government to frame rules prescribing the salaries and allowances payable to and the other terms and conditions of service of the Chairman and other Members. Such a rule making power has been exercised by the Central Government by framing the said Rules of 1986. Rule 15 and Rule 15A are relevant for our consideration which read thus:-

“15. *Conditions of service of sitting Judges of the High Court appointment as Chairman or Vice-Chairman:-*

*Notwithstanding anything contained in these rules, where a sitting judge of a High Court is appointed as the Chairman or a Vice-Chairman of the Tribunal, the service conditions as contained in the High Court Judges (Conditions of Service) Act, 1954 and the rules made thereunder shall apply to him, upto the date of his superannuation as a sitting judge of the High Court. Thereafter, he shall be governed by these rules for the remaining period of his tenure as Chairman or Vice-Chairman as the case may be.*

*15A. 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 Karnataka Administrative Tribunal shall be same as admissible to a serving Judge of a High Court as contained in the High*

*Court Judges (Conditions of Service) Act, 1954 (28 of 1954) and High Court Judges (Travelling Allowances) Rules, 1956.”*

5. It is an admitted position that the said Rules of 1986 continue to operate and remain in force. The appellant has not challenged the validity of said Rules. Rule 15 which starts with *non obstante* clause provides that if a sitting Judge of a High Court is appointed as Chairman or a Vice-Chairman of the State Administrative Tribunal, the service conditions as contained in the said Act of 1954 and Rules made thereunder shall apply to him upto the date of his superannuation as a sitting Judge of the High Court. Thereafter, he shall be governed by the said Rules of 1986. Thus, Rule 15 makes it clear that even if a sitting Judge of the High Court is appointed as the Chairman of the State Administrative Tribunal, he will continue to get the salary as if he is a Judge of the High Court. He is not entitled to salary of the Chief Justice. Rule 15A deals with the situation where a retired Judge of the High Court is appointed as the Chairman of the State Administrative Tribunal. Rule 15A categorically provides that the conditions of service and other perquisites of the Chairman and Vice-Chairman of the State



Administrative Tribunal shall be the same as admissible to a serving Judge of a High Court as contained in the said Act of 1954. Thus, under Rule 15A, a retired Judge of a High Court who is appointed as the Chairman of the State Administrative Tribunal is entitled to salary of a Judge of a High Court.

6. The learned Senior Counsel relied upon the definition of 'Judge' in the said Act of 1954. However, we must note that the same Act provides that the salary of a Judge of High Court shall be Rs.2,25,000/- and the salary of Chief Justice of High Court shall be Rs.2,50,000/-. Though in the definition clause a 'Judge' is defined to include 'Chief Justice', the said Act of 1954 provides for a different pay to a Judge of High Court and to a Chief Justice of High Court.

7. Coming back to Rule 15A of the said Rules of 1986, the Chairman and Vice-Chairman of the State Administrative Tribunal are entitled to same service conditions and other perquisites as are admissible to a serving Judge of a High Court under the said Act of 1954. The salary of a serving Judge of High Court under the said Act of 1954 is Rs.2,25,000/- which was earlier Rs.80,000/-. That is

how in the letter of appointment dated 15<sup>th</sup> December 2015, the pay of the appellant is rightly mentioned as Rs.80,000/-.

8. Now we come to applicability of the said Rules of 2017. The Rules are applicable as is clear from sub-rule (3) of Rule (1) only to the Chairman, Vice-Chairman of the Authorities or Tribunals which are mentioned in the eight Schedule of the Finance Act, 2017. The eight Schedule includes various Tribunals, including the Central Administrative Tribunals established under the said Act of 1985. However, the eight Schedule does not include the State Administrative Tribunals established under the said Act of 1985. Even the schedule to the said Rules of 2017 does not contain the State Administrative Tribunal. Therefore, on the face of it, the said Rules of 2017 are not applicable to the Chairman, Vice-Chairman and Members of the State Administrative Tribunal.

9. Now we come to the letter dated 13<sup>th</sup> November 2017 relied upon by the learned Senior Counsel appearing for the petitioner. Clause 2 of the said letter reads thus:

*“2. As regards applicability of the above said rules for State Administrative Tribunal (SATs), the matter has been taken up with the Department of Legal Affairs and it was advised that the Terms and Conditions of Service prescribed for Central Administrative Tribunal vide rules notified on 01.06.2017 would also be applicable to Chairman and Members of the State Administrative Tribunal.”*

Apart from the fact that what is mentioned therein is an opinion, on the face of it, the said opinion runs completely contrary to the said Rules of 2017.

10. Now we come to the appointment order dated 12<sup>th</sup> June 2019 issued to a Judicial Member of the State Administrative Tribunal who is a retired Judge of this Court. We have already held that the pay of the Chairman and other members of the State Administrative Tribunal shall be as per Rule 15 and Rule 15A of the said Rules of 1986. Therefore, reference in the said order to the said Rules of 2017 is not relevant at all.

11. We appreciate the argument based on the observations made by the Apex Court in the case of **S.P.SAMPATH KUMAR** (*supra*). The contention raised by the appellant that he performs

onerous duties as the Chairman of the State Administrative Tribunal and therefore, he should be treated on par with the Chief Justice of the High Court for the purpose of pay and other service conditions. But we are afraid that cannot be done unless the said Rules of 1986 which have been framed by the Central Government in exercise of rule making power under clause (c) of sub-section (2) of Section 35 of the said Act of 1985 are amended. As per Rule 15A of the said Rules of 1986, the appellant is entitled to salary of a sitting Judge of High Court Judge as a fixed pay. Therefore, we concur with the view taken by the learned Single Judge. Accordingly, the appeal is dismissed.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

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