



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.3193 of 2019

Reserved on: 03.07.2025

Date of Decision: 23.07.2025

Justice (Retired) V.K. SharmaPetitioner
Versus
State of H.P. and AnotherRespondents

Coram:
Hon’ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? ¹ Yes.

For the Petitioner: Ms. Devyani Sharma, Senior Advocate, with Mr. Anirudh Sharma, Advocate.
For the Respondent: Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol and Mr. B.C. Verma, Additional Advocates General and Mr. Ravi Chauhan, Deputy Advocate General, for respondent No.1/State.
Mr. V.B. Verma, Central Government Standing Counsel, for respondent No.2.

Sandeep Sharma, Judge:
Precisely, the question, which needs to be determined in the case at hand is, “***whether pension of retired High Court Judge, can be subsequently ordered to be deducted from salary, which he/she may receive on his appointment as Chairman of State Administrative Tribunal (for short, ‘SAT’), in terms of Section 10 of Administrative Tribunals Act, 1985, (for short, ‘the Act’) or not?***”

2. For having bird’s eye view, facts relevant for adjudication of the case at hand and more particularly for question framed hereinabove are that on the request of respondent/State, Himachal Pradesh

¹Whether the reporters of the local papers may be allowed to see the judgment? Yes.

Administrative Tribunal (**for short, 'HPAT'**) came to be reestablished under Sub-Section (2) of Section 4 of the Act by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training (**for short, 'DoP&T'**) vide Notification dated 29.12.2014, published in the Gazette of India (Annexure P-1). HPAT was to be manned by Chairman, one Judicial Member and two Administrative Members. Petitioner herein, who had retired as Judge of the High Court of Himachal Pradesh, came to be appointed as Chairman of HPAT, by His Excellency, the President of India, vide order dated 29.12.2014 (Annexure P-2). In terms of afore order, pay of the petitioner was determined at Rs.80,000/- (fixed), with the further stipulation that conditions of service are to be governed by the provisions of the Act, as amended by the Administrative Tribunals (Amendment) Act, 2006. Since there was a minor discrepancy in Paragraph 2 of the order, relating to the term of office of the petitioner, afore order, appointing petitioner as Chairman of HPAT, was partly modified, vide subsequent order dated 19.02.2015 (Annexure P-4), thereby modifying Paragraph 2 of the order, but other terms & conditions mentioned in the order, remained untouched.

3. Petitioner took charge as Chairman of HPAT on 27.02.2015 (Annexure P-6), whereafter Department of Personnel, Government of Himachal Pradesh, vide communication dated 28.02.2015 (Annexure P-5), addressed to Registrar, HPAT, *inter alia*, communicated that scale of

the petitioner would be "regulated as per the rules notified by the Government of India". On 13.04.2015, Department of Personnel, Government of Himachal Pradesh, issued an office order (Annexure P-7), stating therein that consequent upon the appointment of Mr. Justice V.K. Sharma (Retd.) as Chairman in the HPAT in the scale of pay of Rs.80,000/- (fixed), vide Government of India, Ministry of Personnel, Public Grievances and Pensions, DoP&T, Order No.A-11014/404/2008-AT dated 29.12.2014, his pay is hereby fixed in the pay scale of Rs.80,000/- (fixed) in accordance with the provisions of Himachal Pradesh Administrative Tribunals (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1986 (as amended from time to time) as well as in terms of Government of Himachal Pradesh, Department of Personnel letter No.Per(AP B)A(1)-1/2013 dated 28.02.2015. Pursuant to afore order, though pay of petitioner came to be fixed in the scale of pay of Rs.80,000/- (fixed), but minus pension i.e. Rs.4,80,000/- per annum, being received by the petitioner in lieu of service rendered by him as Judge of the High Court.

4. For completion of facts, it is important to take note of the fact that Government of Himachal Pradesh, vide letter dated 13.01.2014, while setting-up Administrative Tribunal for the State of Himachal Pradesh, also forwarded draft rules of Himachal Pradesh Administrative Tribunal (Financial and Administrative Powers) Rules, 2014 and the Himachal Pradesh Administrative Tribunal (Staff) (Conditions of Service)

Rules, 2014, to DoP&T. Though vide communication dated 14.02.2014 (Annexure P-8), DoP&T made some minor corrections with the pencil in the afore draft rules, but specifically informed respondent/State that in terms of Sub-Section (3) of Section 8 of the Act, the service conditions of the Chairman and Members of the Administrative Tribunals shall be same as applicable to the Judges of the High Courts. While apprising aforesaid fact, DoP&T further apprised State of Himachal Pradesh that Himachal Pradesh Administrative Tribunal (Salaries and Allowances & Conditions of Service of Chairman & Members) Rules, are not required to be framed and service conditions of the Chairman and Members of the proposed HPAT be governed by the provisions of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and Rules framed thereunder. However, respondent/State vide communication dated 13.04.2015, as taken note hereinabove, though fixed the pay of the petitioner in the scale of Rs.80,000/-, but minus pension being received by him, in the capacity of retired High Court Judge. Interestingly, vide communication dated 07.09.2015 (Annexure P-9), office of Additional Chief Secretary (Personnel) to the Government of Himachal Pradesh, apprised Registrar, HPAT, in response to communication dated 01.09.2015, that as per Para 3 of DoP&T letter No.A-11014/4/2008-AT dated 14.02.2014, the service conditions of the Chairman and Members of the HPAT are to be governed by the provisions of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Rules

framed thereunder, but yet fixed the pay of the petitioner in the scale of Rs.80,000/- (fixed), in terms of Himachal Pradesh Administrative Tribunals (Salaries and Allowances and conditions of service of Chairman, Vice Chairman and Members) Rules, 1986, which otherwise stood repealed, on the date, erstwhile HPAT was abolished in the year 2008.

5. Though after receipt of communication dated 14.02.2014, Department of Personnel, Government of Himachal Pradesh, vide office order dated 11.12.2015 (Annexure P-10), rectified the error committed by it while issuing order dated 13.04.2015 (Annexure P-7), thereby fixing the salary of the petitioner at the rate of Rs.80,000/- in terms of Himachal Pradesh Administrative Tribunals (Salaries and Allowances and conditions of service of Chairman, Vice Chairman and Members) Rules, 1986 and recorded that scale of pay of the petitioner would be governed by the provisions of High Court Judges (Salaries and Conditions of Service) Act, 1954 and Rules framed thereunder, but again recorded that pay of the petitioner would be "basic pay" less "pension", i.e. Rs.40,000/-, contrary to the previous order. Subsequently, in view of the amendment made to the High Court Judges (Salaries and Conditions of Service) Act, 1954 in January 2018, the Additional Chief Secretary (Personnel) to the Government of Himachal Pradesh issued communication dated 30.10.2018 (Annexure P-11) to the Controller (F&A), Department of Personnel, Government of Himachal Pradesh, with

a copy to the Registry of HPAT, *inter alia*, communicating therein that in light of above mentioned amendments, scale of pay of the petitioner shall be as Rs.2,25,000/- (fixed) by the Government of India. Though it never came to be mentioned in afore order that pension admissible to the petitioner as former Judge of the High Court of Himachal Pradesh shall be deductible from the fixed pay of the petitioner as Chairman of the HPAT, so determined, but vide office order dated 19.12.2018, issued by Department of Personnel, Government of Himachal Pradesh (Annexure P-12), it again came to be recorded that scale of pay of the petitioner has been determined as Rs.2,25,000/- (fixed) and the same would be "basic pay" less "pension" i.e. Rs.1,12,500/-.

6. In the afore background, petitioner made a detailed representation (Annexure P-13) on 28.03.2019 to respondent No.1 through Registrar, HPAT, but the same was rejected on 05.09.2019 (Annexure P-15) vide communication dated 13.09.2019 (Annexure P-14). Perusal of aforesaid communication reveals that reason for rejection was the Rules of the Himachal Pradesh Administrative Tribunals (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1986 (Annexure P-16), wherein it was provided that Chairman/Vice Chairman or a Member shall receive salary as determined, but after deducting pension received by him from previous office. In afore communication, it also came to be recorded that appointment of petitioner as Chairman of HPAT is a case of

reemployment and as such, he is not entitled to pension, being received by him, on account of his having retired as Judge of the High Court, in addition to salary, attached to the post of Chairman. Before controversy *inter se* petitioner and State of Himachal Pradesh could be resolved, HPAT was abolished vide notification dated 26.07.2019 (Annexure P-19). In afore background, petitioner has approached this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein for following main reliefs:

“(I) That a writ in the nature of certiorari may kindly be issued thereby quashing and setting aside Annexure P-7 (Colly) dated 13.4.2015, 13.5.2015, 2.9.2015, 16.12.2015, 2.6.2016, 24.6.2017, 13.12, 2018 and 22.7.2019, Annexure P-10 dated 11.12.2015, Annexure P-12, dated 19.12.2018, Annexure P-15, dated 5.9.2019 and Annexure P-17 dated 30.8.2019.

(II) That a writ in the nature of writ of mandamus may kindly be issued thereby directing the Respondent to strictly implement Annexure P-2, appointment order dated 29.12.2014, issued by His Excellency, the President of India, read with communication dated 30.10.2018, Annexure P-11, and thereafter make the entire payment of arrears to the petitioner alongwith interest at the rate of 12% per annum and same legal position be held with respect to payment of pension, gratuity, leave encashment, etc. etc. admissible to the Petitioner in relation to the independent service as the Chairman, Himachal Pradesh Administrative Tribunal.”

7. Pursuant to notices issued in the instant proceedings, respondent No.1 and 2 have filed replies, perusal whereof reveals that facts, as have been noticed hereinabove, are not in dispute. Attempt has been made to defeat the claim of the petitioner as put forth hereinabove through petition at hand on the ground that pay & allowances of the petitioner pursuant to his appointment as Chairman of HPAT are to be governed by the provisions contained under Himachal Pradesh State

Administrative Tribunal Act, Section 10 of the Act and Himachal Pradesh Administrative Tribunals (Salaries and Allowances and conditions of service of Chairman, Vice Chairman and Members) Rules, 1986. Besides above, ground of delay and laches has been also raised at the behest of respondent/State. In nutshell, it has been stated at the behest of respondents that pay of the petitioner has been rightly fixed after following the general principle of "pay minus pension" in case of reemployed pensioners. While refuting the claim of the petitioner, that his pay has been wrongly fixed by reducing the amount of pension from the last pay drawn, it has been stated at the behest of respondents that in view of provisions of fixation of pay of Re-employed Pensioners-Central Civil Services (Fixation of Pay of Reemployed Pensioners) Orders, 1986 and Para 4 and 8(iv) of the Government of India, Office Memorandum dated 01.05.2017 (Annexure R/II), no illegality can be said to have been committed by the respondents while deducting pension from the salary received by the petitioner in the capacity of Chairman of HPAT. Lastly, it has been submitted that petitioner could have refused to accept the offer of appointment to this position in case the service conditions were not acceptable to him, however, petitioner has approached this Court, after his term of office was over and as such, plea raised by him otherwise deserves to be rejected on the ground of delay and laches.

8. Reply filed on behalf of respondent No.2 i.e. Union of India, if perused in its entirety, suggests that conditions of service of

Chairman/Members appointed on or after 19.02.2007 were governed by Sub-Section (3) of Section 8 of the Administrative Tribunal (Amendment) Act, 2006. It is further averred in the reply of respondent-Union of India that there is no provision in the High Court Judges Rules, 1956 (as on 01.02.2015), as to how the pay of a retired Judge will be determined on accepting a new appointment/assignment under Central/State Government. However, Rule 2 of High Court Judges Rules, 1956, states that the conditions of service of a Judge of a High Court for which no express provision has been made in the High Court Judges (Condition of Service) Act, 1954, shall be deemed to have been determined by the Rules for the time being applicable to a member of an IAS holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated. It is further averred in the reply of respondent-Union of India that pay of the reemployed pensioners who are reemployed in civil services and posts in connection with the affairs of Union Government after retirement, is governed by the Central Civil Services (Fixation of Pay of Reemployed Pensioners) Orders, 1986 (Annexure R-2/1), issued vide DoP&T OM dated 31.07.1986 (as revised from time to time). As per reply of respondent-Union of India, pay of the reemployed pensioners who are reemployed in civil services and posts in connection with the affairs of Union Government after retirement, is to be fixed by reducing the gross amount of pension drawn by him as per Para 4(ii) of Order, 1986. It has been further submitted by respondent-

Union of India that Central Administrative Tribunal (CAT) vide letter dated 27.01.2020 (Annexure R-2/2), has informed that it has been in the practice of fixing the pay of retired High Court Judges, when appointed as Chairman/Members in CAT, in terms of Section 10 (Salaries and Allowances and Other terms of Conditions of Services of Chairman, Vice-Chairman and Members) of the Administrative Tribunals Act, 1985, read with the provisions of CCS (Fixation of Pay of Reemployed Pensioners) Orders, 1986, after reducing the gross amount of pension, drawn by him.

9. I have heard the parties and gone through the record of the case, as well as law cited by learned counsel representing the parties, which shall be discussed in later part of the judgment.

10. Before ascertaining the correctness of rival submissions made at the behest of parties to the *lis*, this Court finds it necessary to take note of relevant provisions of the Act as well as certain communications, exchanged *inter se* State of Himachal Pradesh and Government of India, thereby clarifying that which of rules, shall be applicable in the case of retired High Court Judge, who subsequently came to be appointed as Chairman of HPAT, for his pay and other allowances. At this stage, it would be apt to take note of Sections 6, 8 and 10 of the Act, which reads as under:

“6. Qualifications for appointment as Chairman, Vice-Chairman and other members.—

(1) A person shall not be qualified for appointment as the Chairman unless he is, or has been, a Judge of a High Court:

Provided that a person appointed as Vice-Chairman before the commencement of this Act shall be qualified for appointment as Chairman if such person has held the office of the Vice-Chairman at least for a period of two years.

(2) A person shall not be qualified for appointment,—

(a) as an Administrative Member, unless he has held for at least two years the post of Secretary to the Government of India or any other post under the Central or State Government and carrying the scale of pay which is not less than that of a Secretary to the Government of India for at least two years or held a post of Additional Secretary to the Government of India for at least five years or any other post under the Central or State Government carrying the scale of pay which is not less than that of Additional Secretary to the Government of India at least for a period of five years:

Provided that the officers belonging to All-India services who were or are on Central deputation to a lower post shall be deemed to have held the post of Secretary or Additional Secretary, as the case may be, from the date such officers were granted proforma promotion or actual promotion whichever is earlier to the level of Secretary or Additional Secretary, as the case may be, and the period spent on Central deputation after such date shall count for qualifying service for the purposes of this clause;

(b) as a Judicial Member, unless he is or qualified to be a Judge of a High Court or he has for at least two years held the post of a Secretary to the Government of India in the Department of Legal Affairs or the Legislative Department including Member-Secretary, Law Commission of India or held a post of Additional Secretary to the Government of India in the Department of Legal Affairs and Legislative Department at least for a period of five years.

(3) The Chairman and every other Member of the Central Administrative Tribunal shall be appointed after consultation with the Chief Justice of India by the President.

(4) Subject to the provision of sub-section (3), the Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State.

(5) The Chairman and every other Member of a Joint Administrative Tribunal shall, subject to the provisions of sub-section (3) and subject to the terms of the agreement between the participating State Governments published under sub-section (3) of section 4 of the principal Act, be appointed by the President after consultation with the Governors of the concerned States.

Explanation.—In computing for the purpose of this section, the period during which a person has held any post under the Central or State Government, there shall be included the period during which he has held any other post under the Central or State Government (including

an office under this Act) carrying the same scale of pay as that of first mentioned post on a higher scale of pay.”

8. Term of office.—

(1) The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairman shall hold office as such after he has attained the age of sixty-eight years.

(2) A Member shall hold office as such for a term of five years from the date on which he enters upon his office extendable by one more term of five years:

Provided that no Member shall hold office as such after he has attained the age of sixty-five years.

(3) The conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court.

10. Salaries and allowances and other terms and conditions of service of Chairman, and other Members.—

The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, *** and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, *** or other Member shall be varied to his disadvantage after his appointment.

[Provided further that where a serving Government officer is appointed as a Member, he shall be deemed to have retired from the service to which he belonged on the date on which he assumed the charge of the Member but his subsequent service as Member shall, at his option, be reckoned as a post-retirement re-employment counting for pension and other retirement benefits in the service to which he belonged.]

[10A. Saving terms and conditions of service of Vice-Chairman.—The Chairman, Vice-Chairman and Member of a Tribunal appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 (1 of 2007) shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force:

Provided that, however, such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Amendment) Act, 2006 (1 of 2007), may on completion of their term or attainment of the age of sixty-five or sixty-two years, as the case may be, whichever is earlier may, if eligible in terms of section 8 as amended by the Administrative Tribunals (Amendment) Act, 2006 be considered for a fresh appointment in accordance with the selection procedure laid down for such appointments subject to the condition that the total term in office of the Chairman shall not exceed five years and that of the Members, ten years.]

[10B. Qualifications, terms and conditions of service of Chairman and Member.—Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman and other Members of the Tribunal appointed after the commencement of 3[the Tribunals Reforms Act, 2021, shall be governed by the provisions of Chapter II of the said Act]: Provided that the Chairman and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.”]

11. As per Sub-Section (1) of Section 6 of the Act, as reproduced hereinabove, only sitting or retired Judge of High Court shall be qualified for appointment as Chairman of the Administrative Tribunal. Sub-Section (3) of Section 8 of the Act provides that conditions of service of Chairman and Members of the Administrative Tribunal shall be the same as applicable to Judges of the High Court. As per Section 10 of the Act, the salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman and other Members shall be such as may be prescribed by the Central Government. Most importantly, proviso (1) to aforesaid provision clearly provides that neither the salary and allowances nor the other terms and conditions of service of the Chairman or other Member shall be varied to his disadvantage after his appointment.

12. At this stage, it would be also apt to take note of Article 221 of the Constitution of India, which reads as under:

“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."

13. Bare perusal of aforesaid provision of the Constitution suggests that neither the allowances of Judge of the High Court nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment. Precisely the aforesaid provision contained in the Constitution of India is *pari materia* to proviso (1) to Section 10 of the Act.

14. Now being guided by law laid down by Hon'ble Apex Court as well as other Constitutional Courts and afore provisions contained in the Act, this Court would make an endeavour to ascertain the correctness of the claim put forth by the petitioner.

15. In nutshell, case of the petitioner, as has been highlighted in the petition and further canvassed by Ms. Devyani Sharma, learned Senior Counsel representing the petitioner is that since petitioner was appointed by His Excellency, the President of India, vide order dated 29.12.2014 (Annexure P-2), specifically providing therein that scale of pay of the petitioner shall be Rs.80,000/- (fixed), there was no occasion, if any, for respondents to reduce the same by deducting the pension

received by him, in lieu of service rendered by him as a Judge of High Court of Himachal Pradesh.

16. It is not in dispute that petitioner was appointed as Chairman of the HPAT pursuant to the order dated 29.12.2014 passed by His Excellency, the President of India. Careful perusal of order clearly reveals that scale of pay of the petitioner was determined at Rs.80,000/- (fixed). If the aforesaid order is read in its entirety, there appears to be merit in the contention of Ms. Devyani, learned Senior Counsel representing the petitioner that scale of pay so determined was fixed and no deduction in relation to the same was contemplated. Though, it came to be argued by Mr. Anup Rattan, learned Advocate General that order dated 29.12.2014 issued by His Excellency, the President of India, itself provides for governing of condition of service of petitioner as Chairman of HPAT by the provisions of the Administrative Tribunal Act, 1985, as amended by the Administrative Tribunals (Amendment) Act, 2006 i.e. Section 10, but careful perusal of aforesaid provision of Act suggests that salaries and allowances payable to, Chairman and other Members shall be such as may be prescribed by the Central Government.

17. In the case at hand, salary and allowances payable to Chairman and other Members never came to be prescribed by the Central Government. Vide notification dated 13.12.1989, DoP&T, in exercise of powers conferred by Sub-Section (1) read with Clause (c) of Sub-Section (2) of Section 36 of the Act, whereby Central Government

promulgated Rules to amend the Himachal Pradesh Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman and Members) Rules, 1986, namely, Himachal Pradesh Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman and Member) Amendment Rules, 1989, providing therein that in case of appointment as a Chairman or a Member, a person who has retired as a Judge of a High Court or who has retired from service under the Central Government or a State Government and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension and or gratuity, employer's contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay shall be reduced by the gross amount of pension equivalent of service gratuity or employer's contribution to Contributory Provident Fund or any other form of retirement benefits, if any, but excluding pension equivalent of retirement gratuity, drawn or to be drawn by him. Subsequently Rule 15A came to be inserted, providing therein that notwithstanding anything contained in the Rules 4 to 15 of the Central Rules, the condition of service and other perquisites available to the Chairman of the HPAT shall be the same as admissible to serving Judge of High Court as contained in High Court Judges (Salaries and Conditions of Service) Act, 1954 (28 of 1954) and High Court Judge (Travelling Allowances) Rules, 1956 (Annexure P-16).

18. Though while placing reliance upon afore Rules, Mr. Anup Rattan, learned Advocate General attempted to argue that since in the appointment letter of petitioner, it was stipulated that his salary and allowances shall be governed under the Act, no illegality can be said to have been committed by the respondents while ordering deduction of pension from the salary received by the petitioner on account of his being Chairman of HPAT. However, this Court having carefully perused Section 10, which has otherwise been reproduced hereinabove, is not persuaded to agree with learned Advocate General for the reason that notification dated 13.12.1989 (Annexure P-16), whereby Himachal Pradesh Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman and Members) Rules, 1986, came to be formulated, otherwise could not have been made applicable in the case of the petitioner as afore Rules stood repealed on the date, erstwhile HPAT was abolished, in the year 2008, whereafter communication dated 14.02.2014 (Annexure P-8) was sent by DoP&T, thereby communicating to Department of Personnel to the Government of Himachal Pradesh, that service conditions of the petitioner would be governed by High Court Judges (Salaries and Conditions of Service) Act, 1954 and Rules framed thereunder. Afore communication was subsequently communicated to Registry of HPAT by the Department of Personnel vide communication dated 07.09.2015 (Annexure P-9), but yet, Government of Himachal Pradesh, again recorded that pay of the

petitioner would be “basic pay” less “pension”, i.e. Rs.40,000/- contrary to the appointment order (Annexure P-2), whereby scale of pay of the petitioner was fixed at Rs.80,000/- (fixed).

19. Though Mr. Anup Rattan, learned Advocate General argued that Notification dated 13.12.1986 (Annexure P-16) was never withdrawn at the time of abolishment of HPAT vide Notification dated 08.07.2008, rather, same was in operation at the time of appointment of the petitioner as Chairman of HPAT, but such plea of learned Advocate General is without any merit. Once HPAT was abolished vide Notification dated 08.07.2008, Notification dated 13.12.1986 stood *ipso facto* rescinded, if it is so, same otherwise could not be made applicable to govern the salary and allowances to the petitioner against the post of Chairman, HPAT, in the year 2014. There is nothing to suggest that after petitioner's appointment, Rules of 1986 were ever revived or reframed. Vide communication dated 13.01.2014, Government of Himachal Pradesh, forwarded draft rules of Himachal Pradesh Administrative Tribunal (Financial and Administrative Powers) Rules, 2014 and the Himachal Pradesh Administrative Tribunal (Staff) (Conditions of Service) Rules, 2014, to Government of India, Ministry of Personnel, Public Grievances and Pensions, DoP&T. Careful perusal of communication 14.02.2014 (Annexure P-8) reveals that some minor corrections were made with the pencil in the afore draft rules by the DoP&T, but vide afore communication, it specifically apprised State Government that in terms of

Sub-Section (3) of Section 8 of the Act, the service conditions of the Chairman and Members of the Administrative Tribunals shall be same as applicable to the Judges of the High Courts and as such, Rules of 2014 are not required to be framed and service conditions of the Chairman and Members of the proposed HPAT be governed by the provisions of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and Rules framed thereunder. Interestingly, though after receipt of afore communication, Joint Secretary (Personnel) to the Government of Himachal Pradesh, vide communication dated 07.07.2015, apprised Registrar, HPAT, that service conditions of the Chairman and Members of HPAT are to be governed by the provisions of the High Court Judges (Salaries and Conditions of Service) Act, 1954, but yet vide order dated 13.04.2015, fixed the pay of the petitioner in the scale of pay of Rs.80,000/- in accordance with High Court Judges (Salaries and Conditions of Service) Act, 1954, but "minus pension". Though for the reasons stated hereinabove, Section 10 of Act, otherwise sought to be applied in the case of the petitioner cannot be made applicable, but even otherwise, if it is presumed that the same is applicable, proviso (1) to afore Section comes to the rescue of the petitioner. Proviso (1) to Section 10 clearly provides that neither the salary and allowances nor the other terms and conditions of service of the Chairman or other Member shall be varied to his disadvantage after his appointment.

20. Since in the case at hand, His Excellency, the President of India, while appointing petitioner as Chairman of HPAT, vide order dated 29.12.2014 (Annexure P-2) had fixed his salary to the tune of Rs.80,000/- (fixed), same could not have been varied/reduced to his disadvantage after his appointment, that too on the basis of order passed by Secretary (Personnel) to the Government of Himachal Pradesh. Though repeatedly State Government came to be apprised by Government of India that salary and other allowances of the Chairman and other Members of the HPAT are to be governed by the provisions of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Rules framed thereunder, but yet it repeatedly proceeded to pass the same order, thereby fixing the pay of the petitioner in the scale of Rs.80,000/- (fixed), but minus pension being received by him as retired Judge of the High Court. Reliance in this regard, is placed upon judgment of Hon'ble Apex Court in **B. Rajagopala Vs. STA Tribunal**, AIR 1964 SC 1573, wherein it has been held that administrative orders and directions do not have the force of statutory provisions and cannot partake of the character of provisions of law. Hon'ble Apex Court held that what the law and provisions of law could legitimately do cannot be permitted to be done by executive or administrative orders.

21. Hon'ble Apex Court in **K. Kuppusamy Vs. State of Tamil Nadu**, (1998) 8 SCC 469, has opined that statutory provisions cannot be overridden by executive orders or executive practice.

22. Similar view was taken by the Hon'ble Apex Court in **State of Madhya Pradesh Vs. G.S. Dall and Flour Mills**, AIR 1991 SC 772, wherein it came to be held that executive instructions cannot run contrary to statutory provisions or whittle down their effect.

23. Though Mr. Anup Rattan, learned Advocate General attempted to argue that since petitioner after his being retired as High Court Judge was reemployed as Chairman of HPAT and as per the Act, his salary and allowances and other terms and conditions of service were to be governed in terms of Section 10 of the Act, no illegality can be said to have been committed by the respondents while issuing office order dated 13.04.2015, thereby providing that Chairman of HPAT shall receive fix salary of Rs.80,000/- minus pension, being received by him from his previous office, however, having taken note of law laid down by Hon'ble Apex Court as well as Constitutional Courts in catena of cases, as reproduced hereinbelow, this Court is not persuaded to agree with learned Advocate General for the reason that appointment of the petitioner to the post of Chairman after his being retired as High Court cannot be termed as reemployment. Reliance in this regard is placed upon the judgment of Hon'ble Apex Court in **All India Judges' Association and Others Vs. Union of India and Others**, (1993) 4 SCC 288, wherein it has been categorically held that judicial service is not service in the sense of 'employment'. The Judges are not employees, they exercise the sovereign judicial power of the State. Hon'ble Apex

Court in afore judgment further held that Judges are holders of public offices in the same way as the members of the Council of Ministers and the Members of the Legislature. Those who exercise the State power are the Ministers, the Legislatures and the Judges, and not the Member of their staff who implement or assist in implementing their decisions. Most importantly, in afore judgment, Hon'ble Apex Court while holding that society has a stake in ensuring the independence of the judiciary, held that distinction between the Judges and the members of the other services has to be constantly kept in mind. Judicial independence cannot be secured by making mere solemn proclamations about it, but it is to be secured both in substance and in practice. Relevant Para of afore judgment reads as under:

"7. It is not necessary to repeat here what has been stated in the judgment under review while dealing with the same contentions raised there. We cannot however, help observing that the failure to realize the distinction between the judicial service and the other services is at the bottom of the hostility displayed by the review petitioners to the directions given in the judgment. The judicial service is not service in the sense of 'employment'. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State power are the Ministers, the Legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the Legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the Legislators and the Judges and not between the Judges

and the administrative executive. In some democracies like the USA, members of some State judiciaries are elected as much as the members of the legislature and the heads of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on a par with the members of the judiciary, either constitutionally or functionally.

8. This distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it. To keep the Judges in want of essential accoutrements and thus to impede them in the proper discharge of their duties, is to impair and whittle away justice itself.

10. This leaves us with the contention of the review petitioners that by the directions in question, this Court has encroached upon the powers of the executive and the legislature under Article 309 to prescribe the service conditions for the members of the Judicial Service. In view of the separation of the powers under the Constitution, and the need to maintain the independence of the judiciary to protect and promote democracy and the rule of law, it would have been ideal if the most dominant power of the executive and the legislature over the judiciary, viz., that of determining its service conditions had been subjected to some desirable checks and balances. This is so even if ultimately, the service conditions of the judiciary have to be incorporated in and declared by the legislative enactments. But the mere fact that Article 309 gives power to the executive and the legislature to prescribe the service conditions of the judiciary, does not mean that the judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the judiciary in that behalf, for theoretically it would not be impossible for the executive or the legislature to turn and twist the tail of the judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the judiciary”

24. Reliance is also placed upon judgment passed by Hon'ble Apex Court in ***Union of India Vs. K.B. Khare and Others***, 1994 Supp. (3) SCC 502, wherein it came to be held that service in Administrative Tribunals is not reemployment in connection with the affairs of the Union

or the State and same is an independent judicial service, and therefore, linking of past service, with the service in the Administrative Tribunals is impermissible. Relevant Para of afore judgment reads as under:

“16. A careful reading of the above provisions clearly establishes that they do not envisage linking of past service with a service in the Tribunal which is a quasi-judicial body. In this connection, it is useful to refer to *S.P. Sampath Kumar v. Union of India* [(1987) 1 SCC 124 : (1987) 2 ATC 82 : AIR 1987 SC 386] , in answering the question whether the Administrative Tribunal could be regarded as equally effective and efficacious in exercising the power of judicial review as the High Court acting under Articles 226 and 227 of the Constitution. It was held as under: (SCC p. 131, para 5)

“It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have same modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained Judges in the High Courts and the Supreme Court.”

Therefore, the service is of judicial nature.

17. In our considered view, the High Court has gone wrong in considering the service in CAT as re-employment in connection with the affairs of the Union. On the contrary, an independent judicial service, the appointment in the CAT is on tenure basis. The pension relating to such post is clearly governed by Rule 8 of the Rules quoted above and at the risk of repetition, we may state it exhaustive in nature. If that be so, there is no scope for resort to Rule 16 at all. If the first respondent had to resign from Judicial Service because of the statutory requirement under Rule 5 of the Rules (quoted above), we are unable to see as to how both the services namely senior District Judge in the State Judicial Service and a Member in the CAT could be clubbed. Such a clubbing is not contemplated at all. From this point of view, we find it difficult to accept the reasoning of the High Court that the matter of option to club the two services for pension is a subject on which the Rules are silent and the residuary provision in Rule 16 of the Rules

intends to fill the gap by supplementing the Rules by rules applicable to the Secretary to the Government of India.

19. In view of the conclusion that the first respondent is not a person re-employed on a post in connection with the affairs of Union Government, we see no scope whatever for applying Central Civil Service (Fixation of Pay of Re-employed Pensioners) Order, 1986.”

25. It has been categorically held that by no stretch of imagination, Judges can be said to be employees of State or Union, rather, they stand in different category, which cannot be equated with other “services”. Hon’ble Apex Court has held that though for convenience certain rules applicable to the latter may, within limits, apply to the former, but issue of Judge’s leave and pension cannot be left dependent on the Executive’s pleasure. In **S.P. Sampath Kumar Vs. Union of India and Others**, (1987) 1 SCC 124, Hon’ble Apex Court held that Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairman and Members of the Administrative Tribunal, lest Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court. While ruling that Member of judiciary exercise the sovereign judicial power of the State, Hon’ble Apex Court has held that Judges are not employees, rather, they are holders of public offices in the same way as the members of the Council of Ministers and the Members of the Legislature. While holding

that High Court Judges occupies a unique position under the Constitution, Hon'ble Apex Court has held that Judge of High Court is not a Government servant and he cannot be said to be holding a post under the Union or the State.

26. In **S.P. Sampath Kumar** (supra), Hon'ble Apex Court while holding that Chairman of the Administrative Tribunal is equivalent to the office of Chief Justice of a High Court, has held as under:

"7. That takes me to another serious infirmity in the provisions of the impugned Act in regard to the mode of appointment of the Chairman, Vice-Chairman and members of the Administrative Tribunal. So far as the appointment of judicial members of the Administrative Tribunal is concerned, there is a provision introduced in the impugned Act by way of amendment that the judicial members shall be appointed by the government concerned in consultation with the Chief Justice of India. Obviously no exception can be taken to this provision, because even so far as Judges of the High Court are concerned, their appointment is required to be made by the President inter alia in consultation with the Chief Justice of India. But so far as the appointment of Chairman, Vice-Chairmen and administrative members is concerned, the sole and exclusive power to make such appointment is conferred on the government under the impugned Act. There is no obligation cast on the government to consult the Chief Justice of India or to follow any particular selection procedure in this behalf. The result is that it is left to the absolute unfettered discretion of the government to appoint such person or persons as it likes as Chairman, Vice-Chairman and administrative members of the Administrative Tribunal. Now it may be noted that almost all cases in regard to service matters which come before the Administrative Tribunal would be against the Government or any of its officers and it would not at all be conducive to judicial independence to leave unfettered and unrestricted discretion in the executive to appoint the Chairman, Vice-Chairmen and administrative members, if a judicial member or an administrative member is looking forward to promotion as Vice-Chairman or Chairman, he would have to depend on the goodwill and favourable stance of the executive and that would be likely to affect the independence and impartiality of the members of the Tribunal. The same would be the position vis-à-vis promotion to the office of Chairman of the Administrative Tribunal. The administrative members would also be likely to carry a sense of obligation to the executive for having been appointed members of the Administrative Tribunal and that would have a tendency to impair the

independence and objectivity of the members of the Tribunal. There can be no doubt that the power of appointment and promotion vested in the executive can have prejudicial effect on the independence of the Chairman, Vice-Chairmen and members of the Administrative Tribunal, if such power is absolute and unfettered. If the members have to look to the executive for advancement, it may tend, directly or indirectly, to influence their decision-making process particularly since the government would be a litigant in most of the cases coming before the Administrative Tribunal and it is the action of the Government which would be challenged in such cases. That is the reason why in case of appointment of High Court Judges, the power of appointment vested in the executive is not an absolute unfettered power but it is hedged in by a wholesome check and safeguard and the President cannot make an appointment of a High Court Judge without consultation with the Chief Justice of the High Court and the Chief Justice of India and a healthy convention has grown up that no appointment would be made by the government which is not approved by the Chief Justice of India. This check or safeguard is totally absent in the case of appointment of the Chairman, Vice-Chairmen and administrative members of the Administrative Tribunal and the possibility cannot be ruled out — indeed the litigating public would certainly carry a feeling — that the decision-making process of the Chairman, Vice-Chairmen and members of the Administrative Tribunal might be likely to be affected by reason of dependence on the executive for appointment and promotion. It can no longer be disputed that total insulation of the judiciary from all forms of interference from the coordinate branches of government is a basic essential feature of the Constitution. The Constitution-makers have made anxious provision to secure total independence of the judiciary from executive pressure or influence. Obviously, therefore, if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairmen and members of the Administrative Tribunal. Or else the Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. I am, therefore, of the view that the appointment of Chairman, Vice-Chairmen and administrative members should be made by the concerned government only after consultation with the Chief Justice of India and such consultation must be meaningful and effective and ordinarily the recommendation of the Chief Justice of India must be accepted unless there are cogent reasons, in which event the reasons must be disclosed to the Chief Justice of India and his response must be invited to such reasons. There is also another alternative which may be adopted by the Government for making appointments of Chairman, Vice-Chairmen and members and that may be by setting up a High

Powered Selection Committee headed by the Chief Justice of India or a sitting Judge of the Supreme Court or concerned High Court nominated by the Chief Justice of India. Both these modes of appointment will ensure selection of proper and competent persons to man the Administrative Tribunal and give it prestige and reputation which would inspire confidence in the public mind in regard to the competence, objectivity and impartiality of those manning the Administrative Tribunal. If either of these two modes of appointment is adopted, it would save the impugned Act from invalidation. Otherwise, it will be outside the scope of the power conferred on Parliament under Article 323-A. I would, however, hasten to add that this judgment will operate only prospectively and will not invalidate appointments already made to the Administrative Tribunal. But if any appointments of Vice-Chairmen or administrative members are to be made hereafter, the same shall be made by the Government in accordance with either of the aforesaid two modes of appointment.

17. What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court — not only in form and *de jure* but in content and *de facto*. As was pointed out in *Minerva Mills* [(1980) 3 SCC 625 : AIR 1980 SC 1789 : (1981) 1 SCR 206] the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations. Article 16 of the Constitution guarantees equality of opportunity in matters of public employment. Article 15 bars discrimination on grounds of religion, race, caste, sex or place of birth. The touchstone of equality enshrined in Article 14 is the greatest of guarantees for the citizen. Centring around these articles in the Constitution a service jurisprudence has already grown in this country. Under Sections 14 and 15 of the Act all the powers of the courts except those of this Court in regard to matters specified therein vest in the Tribunal — either Central or State. Thus the Tribunal is the substitute of the High Court and is entitled to exercise the powers thereof.

18. The High Courts have been functioning over a century and a quarter and until the Federal Court was established under the Government of India Act, 1935, used to be the highest courts within their respective jurisdictions subject to an appeal to the Privy Council in a limited category of cases. In this long period of about six scores of years, the High Courts have played their role effectively, efficiently as also satisfactorily. The litigant in this country has seasoned himself to look up to the High Court as the unfailing protector of his person, property and honour. The institution has served its purpose very well and the common man has thus come to repose great confidence therein. Disciplined, independent and trained Judges well versed in law and working with all openness in an unattached and objective manner have ensured dispensation of justice over the years. Aggrieved people approach the court — the social mechanism to act as the arbiter — not

under legal obligation but under the belief and faith that justice shall be done to them and the State's authorities would implement the decision of the court. It is, therefore, of paramount importance that the substitute institution — the Tribunal — must be a worthy successor of the High Court in all respects. That is exactly what this Court intended to convey when it spoke of an alternative mechanism in *Minerva Mills* case. [(1980) 3 SCC 625 : AIR 1980 SC 1789 : (1981) 1 SCR 206]

27. In case titled as ***Union of India Vs. Sankalchand Himtala Sheth***, AIR 1977 SC 2328, Hon'ble Apex Court while interpreting Clause (2) of Article 221 of the Constitution of India, held that Judges have been assigned, by the *suprema lex*, an independent sentinel's duty and he/she cannot be considered to be a Government servant, but a constitutional functionary. He being constitutional authority cannot be equated with other "services" although for convenience certain rules applicable to the latter may, within limits, apply to the former, but issue of Judge's leave and pension cannot be left dependent on the Executive's pleasure.

Relevant Para of afore judgment, reads as under:

"94. It was right of Sri Seervai to have spread the canvas wide since the appreciation of this pivotal issue of the Judge's *metier* and methods demands acceptance of the broader bearings and constitutional culture. We here construe not merely Article 222 but lay down the larger law of the Constitution. We must first understand that Judges have been assigned, by the *suprema lex*, an independent sentinel's duty. To defeat this role subtly or crudely is to rob the Constitution of a vital value. So it is that we must emphatically state a Judge is not a government servant but a constitutional functionary. He stands in a different category. He cannot be equated with other "services" although for convenience certain rules applicable to the latter may, within limits, apply to the former. Imagine a Judge's leave and pension being made precariously dependent on the executive's pleasure ! To make the government — not the State — the employer of a superior court Judge is to unwrite the Constitution. To conclude on this branch, we cannot tear off the text of Article 222 and put it under a microscope but must master the scheme and setting and descry the meaning beyond the political sunrises and sunsets of passing seasons. Indeed, the spiritual

quiet and spiritual quest of the Judge's toils lies here. We may listen to Chief Justice Hidayatullah's chastening words:

"One must, of course, take note of the synthesised authoritative content or the moral meaning of the underlying principle of the prescriptions of law, but not ignore the historic evolution of the law itself or how it was connected in its changing moods with the social requirements of a particular age. [Judicial Methods by M. Hidayatullah, C.J. at p. 45]"

28. In **K.B. Khare** (supra), Hon'ble Apex Court has held that service in Administrative Tribunals is not reemployment in connection with the affairs of the Union or the State and same is an independent judicial service, and therefore, linking of past service, with the service in the Administrative Tribunals is impressible. Similarly, Hon'ble Apex Court in **Union of India and Others Vs. Pratibha Bonnerjea and Another**, (1995) 6 SCC 765, held that Judge of the High Court occupies a unique position under the Constitution and for him to discharge his duties in an independent manner, total independence from executive is imperative and he cannot be said to be holding a post under the Union or the State.

Relevant Para of afore judgment, reads as under:

"4. 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 ill will. 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 ill will, 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 v. Sankalchand Himatlal Sheth* [(1977) 4 SCC 193 : 1977 SCC (L&S) 435] Chandrachud, J. said in paragraph 32 at p. 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"

29. Since Hon'ble Apex Court in catena of judgments, as have been reproduced hereinabove, has held that Judges cannot be considered as a Government employee, coupled with the fact that Sub-Section (3) of Section 8 of the Act clearly provides that service conditions of the Chairman and Members of the Administrative Tribunals shall be same as applicable to the Judges of the High Courts, argument advanced by Mr. Anup Rattan, learned Advocate General that petitioner's appointment as Chairman of the HPAT, after his being retired as High Court Judge, is a case of reemployment, deserves outright rejection.

30. At the cost of repetition, it is stated that otherwise also, in terms of Proviso (1) to Section 10 of the Act, salary and allowances of the Chairman or other Member fixed at the time of appointment could not have been varied or reduced to his disadvantage. Admittedly in appointment letter of the petitioner, his salary was fixed at Rs.80,000/-, which was subsequently revised to Rs.2,25,000/- and same could not have been varied or reduced to his disadvantage, that too under the garb of Section 10 of the Act, which empowers Central Government to prescribe salaries and allowances payable to Chairman and other Members. As has been noticed hereinabove, Government of India itself vide communication dated 14.02.2014 (Annexure P-8) advised State Government to apply provisions of High Court Judges (Salaries and Conditions of Service) Act, 1954 and Rules framed thereunder, for

prescribing conditions of service as well as salary and allowances attached to the office of Chairman and Member.

31. Division Bench of High Court of Andhra Pradesh in ***Government of Andhra Pradesh Vs. K.A. Ansari***, 1996(8) SLR 461, while interpreting Section 10 of the Act, has held that the Central Government alone is competent to decide about the salary and allowances payable to, and other terms and conditions of service, including pension, gratuity and other retirement benefits, admissible to the Chairman of the Administrative Tribunal, and the State Government is not competent to vary the conditions of service. Relevant Para of afore judgment reads as under:

“3. It is not in dispute, before us, that the service conditions applicable to all serving High Court Judges, including medical allowance, are applicable to the Vice-Chairman of the Andhra Pradesh Administrative Tribunal. Section 10 of the Administrative Tribunals Act, 1985 provides that—

“The salaries and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman, Vice-Chairman and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Members shall be varied to his disadvantage after his appointment.

4. Once the Central Government has treated the conditions of service of the Chairman and Vice-Chairman of the Administrative Tribunals on par with that of the serving Judges of the High Court, the said conditions have to be continued. It is to be seen that when the Central Government is alone competent to decide about the salary and allowances payable to and the other terms and conditions of service, including pension, gratuity and other retirement benefits of the Chairman, Vice-Chairman and other Members of the Tribunal, the State Government is not competent to vary the conditions of service.”

32. Mr. Anup Rattan, learned Advocate General, argued that petitioner herein has been given pay of High Court Judge, but provision contained in High Court Judges (Salaries and Conditions of Service) Act, 1954, nowhere suggests that after retirement of the High Court Judge, amount of pension being received by him in capacity of High Court Judge shall not be deducted on his reemployment. He further submitted that in case pension being received by the petitioner is not deducted from his salary, fixed at the time of his appointment, he would end-up getting more salary than sitting Judge of High Court, which would be in violation of High Court Judges (Salaries and Conditions of Service) Act, 1954. However, this Court is not persuaded to accept the aforesaid submissions of learned Advocate General for the reason that appointment of the petitioner to the post of Chairman, after his retirement as High Court Judge, is not a case of reemployment, which fact is otherwise evident from his appointment order dated 29.12.2014, issued by His Excellency, the President of India. Once it is settled that appointment of the petitioner is not reemployment, Central Civil Services (Fixation of Pay of Reemployed Pensioners) Orders, 1986 (Annexure R-2/1) annexed with the reply of respondent No.2, sought to be applied in the case of the petitioner, are not applicable.

33. As per reply filed by respondent No.2, conditions of service of Chairman/Members appointed on or after 19.02.2007 were governed by Sub-Section (3) of Section 8 of the Administrative Tribunal

(Amendment) Act, 2006. As per Sub-Section (3) of Section 8 of the Administrative Tribunal (Amendment) Act, 2006, the service conditions of the Chairman and Members of the Administrative Tribunals shall be same as applicable to the Judges of the High Courts. There is no provision in the High Court Judges Rules, 1956, as to how the pay of a retired Judge will be determined on accepting a new appointment/assignment under Central/State Government. However, Rule 2 of High Court Judges Rules, 1956, provides that conditions of service of a Judge of a High Court for which no express provision has been made in the High Court Judges (Condition of Service) Act, 1954, shall be deemed to have been determined by the Rules for the time being applicable to a member of the IAS holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated. It has been attempted to argue on behalf of respondents that pay of the reemployed pensioners who are reemployed in civil services and posts in connection with the affairs of Union Government after retirement, are governed by the Central Civil Services (Fixation of pay of re-employed pensioners) Orders, 1986, issued vide DoP&T OM dated 31.07.1986 (as revised from time to time). Since the pay of reemployed pensioner who are reemployed in civil services and posts in connection with the affairs of Union Government after retirement is to be fixed by reducing the gross amount of pension drawn by him as per Para 4(ii) of Order, 1986, aforesaid argument pressed into service at the behest of

respondents cannot be accepted for the reason that petitioner is not reemployed with Union of India, rather he has been appointed afresh as Chairman of HPAT, established under the Act, that too vide appointment order issued by His Excellency, the President of India.

34. Rule 2 of High Court Judges Rules, 1956, as taken note hereinabove, cannot be pressed into service to defeat the claim of the petitioner for the reason that there was no occasion, if any, to provide in afore Rules, service conditions of retired High Court Judge, who may after his/her retirement accept other judicial appointment and as such, Rule 2 of High Court Judges Rules, 1956, cannot be pressed into service to claim that condition of service of Judge of High Court, for which no express provision has been made in the High Court Judges (Condition of Service) Act, 1954, shall be deemed to have been determined by the Rules for the time being applicable to a member of the IAS holding the rank of Secretary to the Government of the State.

35. Otherwise also, Section 8(3) of the Act only states that conditions of service of Chairman and Members of the Administrative Tribunals shall be same as applicable to the Judges of the High Courts, meaning thereby, Chairman and Member of the SAT, besides getting facilities provided to High Court Judge shall also get salary and allowances as are received by sitting High Court Judge. Since at the time of appointment of the petitioner, sitting High Court Judge was in receipt of basic pay of Rs.80,000/-, which was subsequently revised to

Rs.2,25,000/- (fixed), petitioner herein rightly came to be allowed afore fixed pay, as was being received by the High Court Judge, but question with regard to deduction of pension received by him in lieu of service rendered by him in the capacity of High Court Judge cannot be attached with the provisions contained in the High Court Judges (Condition of Service) Act, 1954 as well as Rules framed thereunder, which only deals with the service conditions of sitting High Court Judges. Since proviso (1) to Section 10 of the Act clearly provides that salary and allowances of Chairman and other Members shall not be varied/reduced to his disadvantage after his appointment, coupled with the fact that conditions of service of Chairman and other Member shall be same as applicable to Judges of the High Court, there was no authority, if any, with the respondents to deduct the pension received by the petitioner in lieu of service rendered by him as High Court Judge.

36. Hon'ble Apex Court in judgments, as have been taken note hereinafter, has categorically held that pension is neither a bounty nor a matter of grace dependent upon the sweet will of the employer, rather same being earned by an employee on account of his having served the State or the Union is a vested right. Since the petitioner before his appointment as Chairman of HPAT rendered valuable services as High Court Judge, he came to be granted pension, which in no way, can be linked to his subsequent appointment as Chairman of HPAT. Pension is earned by the employee for service rendered to fall back, after retirement

and has a nexus, with the salary payable as on the date of retirement, but certainly cannot be linked with the salary, if any, received by High Court Judge, after his fresh appointment to a Tribunal or any other judicial office.

37. Constitution Bench of the Hon'ble Apex Court in ***D.S. Nakara and Others Vs. Union of India and Others***, (1983) 1 SCC 305, held that pension is neither a bounty, nor a matter of grace, dependent upon the sweet will of the employer. It is a payment of past service rendered. Most importantly in afore judgment, Hon'ble Apex Court held that pension as a retirement benefit is in consonance with, and furtherance, of the goals of the Constitution, and it creates a vested right. Relevant Para of afore judgment, reads as under:

"31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure"

38. Similar view came to be taken by the Hon'ble Apex Court in ***U.P. Raghavendra Acharya and Others Vs. State of Karnataka and***

Others, (2006) 9 SCC 630, that pension is deferred salary. It is akin to right of property and is correlated, and has a nexus, with the salary payable as on the date of retirement. Para 25 of afore judgment reads as under:

“25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is correlated and has a nexus with the salary payable to the employees as on the date of retirement”

39. Though at this stage, Mr. Anup Rattan, learned Advocate General placed heavy reliance upon judgment passed by Division Bench of this Court in **Justice Arun Kumar Goel (Retd.)** (supra), but having carefully perused afore judgment in its entirety, this Court finds no application of the same in the case at hand. In afore case, retired High Court Judge, after his having demitted the office of Judge, was appointed as President of H.P. State Consumer Disputes Redressal Commission, vide notification dated 12.07.2005 issued by State of Himachal Pradesh. Two years after his being appointed as President of the State Commission, petitioner in that case represented to State of Himachal Pradesh against the terms of his appointment denying him pension as a High Court Judge during the currency of his tenure as President of the State Commission, but same was rejected, as such, he approached High Court of Himachal Pradesh, by way of Civil Writ Petition, which though at first instance was allowed by learned Single Judge, but subsequently appeal preferred by State of Himachal Pradesh against the judgment of learned Single Judge was allowed.

40. Since in afore case, terms and conditions of appointment to the office of President, State Commission, was in accordance with Rule 13(1) of the Himachal Pradesh Consumer Protection Rules, 2003, and one of the condition enumerated therein was that petitioner shall not be entitled to pension as a retired High Court Judge during currency of his tenure as President of the State Commission, Division Bench of this Court rightly held that appellant-State is not liable to pay more to the writ petitioner than what is admissible to a sitting Judge of the High Court. Rule 13(1) of the Himachal Pradesh Consumer Protection Rules, 2003, which was applicable in the case of the petitioner in afore case stood amended prior to appointment of the petitioner as President of the State Commission. Afore Rule clearly provided that as a President of the State Commission, person concerned shall be entitled to salary, allowances and other perquisites as are available to sitting Judge of the High Court. Division Bench taking note in afore judgment that sitting Judge of High Court does not get any pension held that petitioner is not entitled to pension during the currency of his tenure as President of the State Commission.

41. Proviso (1) to Rule 13 of 2003 Rules provided that a member shall be eligible to any pension granted to him by the Government or any authority but honorarium plus pension shall not exceed the last pay drawn by him. Since it never came to be disputed at the end of petitioner in that case that on payment of pension of High Court Judge along with his salary and allowances and perquisites as

President of the State Commission, his total salary would exceed the last pay drawn by him, Division Bench while setting aside the judgment passed by learned Single Judge held that in order to draw pension, in addition to salary being received by him, as a President of the State Commission, would be contrary to Rule 13(1) of the Himachal Pradesh Consumer Protection Rules, 2003. Moreover, in afore case, notification dated 12.07.2005, appointing petitioner as President of the State Commission itself provided that he shall be entitled to salary, allowances and other perquisites, as available to Judge of the High Court (last pay drawn minus pension). However, in the case at hand, as has been taken note hereinabove, at the time of appointment of the petitioner as Chairman of HPAT, no such condition was ever imposed, rather his salary was fixed at Rs.80,000/- which subsequently came to be revised to Rs.2,25,000/- for the reason that salary of Judge of High Court was enhanced, pursuant to amendment made to the High Court Judges (Salaries and Conditions of Service) Act, 1954 in January 2018. In similar facts and circumstances, Division Bench of this Court in LPA No.83 of 2013, titled **State of H.P. Vs. Lt. General (Retd.) B.S. Thakur and Others**, along with connected matters, decided on 10.01.2023, rejected the argument raised by learned Advocate General that judgment passed by Division Bench of this Court in **Justice Arun Kumar Goel (Retd.)** (supra) is liable to be followed in the case of Chairman and Member of Public Service Commission, who had approached this Court

by way of Civil Writ Petition, laying therein challenge to action of respondents/State inasmuch as pension being received by them in lieu of their past service, sought to be deducted from the salary being received by them in the capacity of Chairman and Member of the Public Service Commission. In afore case, Division Bench of this Court categorically held that so far as appointment of President of H.P. State Consumer Disputes Redressal Commission is concerned, the same is made under statute enacted by the State, whereas Chairman and Member of the Public Service Commission are concerned, they occupy a constitutional post and cannot be said to be Government servant, as has been held in **State of Punjab Vs. Salil Sabhlok and Others**, (2013) 5 SCC 1. Relevant Para of judgment passed in **Lt. General (Retd.) B.S. Thakur** (supra) reads as under:

“9. So far as the judgement given in Ram Phal Singh's case supra is concerned the same has attained finality. The argument raised by the learned Advocate General to the effect that the judgement given by this Court in Justice Arun Kumar Goel (Retd.)'s case supra was liable to be followed is without any merit. So far as the appointment of President of Himachal Pradesh State Consumer Disputes Redressal Commission is concerned the same is made under a statute enacted by the State. In the said case the State can frame its own Rules and Regulations. So far as the Chairman and Members of the Public Service Commission are concerned they occupy a constitutional post and cannot be said to be government servant, as has been held in Salil Sabhlok's case supra . Hence, the decision of this Court in Justice Arun Kumar Goel (Retd.)'s case supra has no bearing on the facts of the present case. The controversy involved in the present case has already been settled in Ram Phal Singh's case supra and the learned Single Judge by rightly basing reliance on the said decision had allowed the writ petition filed by the respondents in the LPA.”

42. Since in the case at hand, petitioner never came to be appointed as Chairman, under any statute enacted by the State,

rather, he was appointed as Chairman of HPAT by His Excellency, the President of India after the establishment of HPAT under Sub-Section 2 of Section 4 of the Administrative Tribunals Act, 1985, coupled with the fact that Section 8(3) of the Act clearly provides that service condition of the Chairman and Member of the HPAT shall be governed by the High Court Judges (Salaries and Conditions of Service) Act, 1954, no parity can be drawn inter se President of State Consumer Disputes Redressal Commission and Chairman of HPAT and as such, judgment of **Justice Arun Kumar Goel (Retd.)** (*supra*), cannot be made applicable in the case at hand.

43. Similarly, other submission made by learned Advocate General that in the event of grant of full pension to the petitioner, his salary would become higher than the sitting High Court is of no relevance for the reason that pension being received by the petitioner in lieu of service rendered by him as High Court Judge has no connection with his salary being received by him in the capacity of Chairman of HPAT, which was otherwise at a fixed salary of Rs.80,000/- (further revised to Rs.2,25,000/-). There was no condition in the appointment letter that pay fixed at Rs.80,000/- shall be minus pension, if any, received by the petitioner in the capacity of High Court Judge. Though respondent/State may have to pay pension to the petitioner in lieu of service rendered as Judge of the High Court, but definitely same cannot be said to have any connection with the subsequent service rendered by

him as Chairman of Tribunal. Though it repeatedly came to be clarified by the Government of India to the State of Himachal Pradesh that draft Himachal Pradesh Administrative Tribunals (Salaries and Allowances and conditions of service of Chairman, Vice Chairman and Members) Rules are not required to be framed and their service conditions are required to be governed by the provisions of High Court Judges (Salaries and Conditions of Service) Act, 1954, but respondents while wrongly considering the appointment of the petitioner as a reemployment, deducted the pension being received by him in the capacity of retired High Court, which for the discussion made hereinabove as well as law taken into consideration, is/was wholly impermissible.

44. Consequently, in view of detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly the same is allowed. Impugned order dated 13.04.2015, salary slips dated 13.05.2015, 02.09.2015, 16.12.2015, 02.06.2016, 24.06.2017, 13.12.2018 and 22.07.2019 (Annexure P-7 Colly), order dated 11.12.2015 (Annexure P-10), order dated 19.12.2018 (Annexure P-12), communication dated 05.09.2019 (Annexure P-15) and salary slip dated 30.08.2019 (Annexure P-17) are quashed and set-aside with the direction to respondents to strictly implement appointment order dated 29.12.2014 (Annexure P-2), issued in the name of His Excellency, the President of India, read with communication dated 30.10.2018 (Annexure P-11) and thereafter make

the entire payment of arrears to the petitioner along with interest at the rate of 9% per annum, from the date same fell due till the date of actual payment.

45. Since petitioner has been fighting for his rightful claim for years together, this Court hopes and trusts that needful in terms of instant judgment shall be done, expeditiously, preferably, within a period of three months from today.

The present petition is disposed in the above terms, so also the pending miscellaneous application(s), if any.

**(Sandeep Sharma),
Judge**

July 23, 2025
(Rajeev Raturi)