

A

## UNION OF INDIA

v.

BIDHUBHUSHAN MALIK AND OTHERS

April 24, 1984

B

[O. CHINNAPPA REDDY, A.P. SEN AND E.S. VENKATARAMIAH, JJ.]

*High Court Judges (Conditions of Service) Act, 1954 (as amended)—First Schedule—Para 10—Validity of.*

C

Affirming the decision of the High Court and dismissing the special leave petition,

HELD : (1) The words "and who has retired on or after the 1st day of October, 1984" appearing in para 10 of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954 (as amended) are unconstitutional and are struck down. [550 A]

D

(2) The Judges (including the Chief Justices) of the High Courts are entitled to pension as computed under the Act (as amended) irrespective of their date of retirement. But they will not be entitled to arrears of pension for the period preceding October 1, 1984, the date which continues to be relevant as being one from which the liberalised pension became operative.

[550 B—C]

E

*Decision of Allahabad High Court in W.P. No. 3281 of 1979 (Judgment delivered on March 2, 1983) upheld.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 9616 of 1983.

F

From the Judgment and Order dated 2nd March, 1983 of the Allahabad High Court in Writ Petition No. 3281 of 1979.

*K. Parasaran, Attorney General, R.D. Agarwala and R.N. Poddar for the Petitioner.*

G

The Order of the Court was delivered by

CHINNAPPA REDDY, J. The Allahabad High Court has held :

H

".....The High Court Judges (Conditions of Service) Act, 1954, (as amended) shall be read down as under, in para 10 of the

First Schedule, the words "and who has retired on or after the 1st day of October, 1974" are unconstitutional and are struck down. Omitting the unconstitutional part it is declared that the Judges (including the Chief Justices) of the High Court are entitled to pension as computed under the High Court Judges (Conditions of Service) Act, 1954, (as amended) irrespective of the date of retirement. The date October 1, 1974, continues to be relevant as being one from which the liberalised pension became operative under the High Court Judges (Conditions of Service) (Amendment) Act, 1976, irrespective of the date of retirement and hence there is no question of payment of arrears of pension for the period preceding October 1, 1974....."

For the reasons mentioned by the learned Judges of the Allahabad High Court in their Judgment, we agree with their conclusion and dismiss the special leave petition.

H.S.K.

*Petition dismissed.*