

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 19134/2022

Milap Chand Dandia Son Of Late Shri Gendilal Ji Dandia, aged
around 91 years, resident of C-5 Chikitsalaya Marg, Bapu Nagar,
Jaipur. (Moile No. 94140-41879), Email -
milap.dandia@gmail.com)

-----Petitioner

Versus

State Of Rajasthan through Chief Secretary of the Government
of Rajasthan, Secretariat, Jaipur

-----Respondents

For Petitioner(s)	:	Mr. Vimal Chand Choudhary, with Mr. Yogesh Kumar Tailor, Ms. Vinita Sharma, Mr. Amit Kumar Soni. Mr. Gaurav Choudhary. Mr. Honey Saini, & Mr. Vijay Pratap Sharma.
For Respondent(s)	:	Mr. Rajendra Prasad, Sr. Adv. & Advocate General, assisted by Ms. Dhriti Laddha.

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

J U D G M E N T

Reportable

07/05/2026

1. The present writ petition, instituted in the nature of a Public Interest Litigation, has been preferred by the petitioner questioning the constitutional validity of the Rajasthan Legislative Assembly (Officers and Members Salary, Emoluments and

Pension) Act, 1956, insofar as it provides pensionary benefits to former Members of the Legislative Assembly. The petitioner has also assailed the subsequent amendments extending additional benefits to such members.

1.1. The reliefs sought in the writ petition read as under:

"In the premise aforesaid it is respectfully prayed:

(i) that the Rajasthan Legislative Assembly (Officers and Members Salary, Emoluments and Pension Act, 1956 (Act 6 of 1957) granting or allowing payment of Pension to MLAs and Rules made there under Annexure 1 and 2 be declared unconstitutional, illegal, ultra vires, void and unenforceable.

(2) to restrain the Government of Rajasthan from making payment to the MLAs, as per the Pension Act, 1956 or to make payment of Pension pursuant to recently passed enactment in the name and style of 'Rajasthan Legislative Assembly (Officers and Members Emoluments and Pension Amendment) Act' whereby the MLAs will become entitled to get reimbursement of their travel abroad with effect from the date it is made applicable.

(3) the Government of Rajasthan may kindly be directed to recover the amount of Pension under the Public Demand Recovery Act or the Land Revenue Act, 1956 or by taking other steps for the recovery and same may be deposited in the Treasury of the State with interest @ 12% per month.

(4) Issue any such other and further orders in the addition to or in substitution for the above prayers as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Mr. Vimal Chand Choudhary, learned counsel appearing on behalf of the petitioner, has submitted before this Court that the foundational constitutional provision germane to the controversy is Article 195 of the Constitution of India, which contemplates only the "salaries and allowances" payable to Members of the Legislative Assembly and does not expressly authorize grant of pension. Article 195 reads as follows:

"195. Salaries and allowances of members:

Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the

Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province."

2.1. Learned counsel further drew the attention of this Court to Entry 38 of List II (State List) of the Seventh Schedule to the Constitution, which is reproduced hereunder:

"List-II - State List

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof."

2.2. Learned counsel also referred to Article 366(17) of the Constitution of India defining the expression "pension", and submitted that pension is a constitutionally distinct concept separately recognized under the Constitution. It was contended that, in the absence of any express constitutional sanction under Article 195 or elsewhere, pensionary benefits could not have been legislatively conferred upon Members of the Legislative Assembly. Article 366(17) reads as under:

"(17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable; a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;"

2.3. Learned counsel submitted that while the State Legislature may legitimately enact laws relating to salaries and allowances payable during the tenure of office of Members of the Legislative Assembly, the conferment of pensionary benefits, in the absence of an express constitutional provision or constitutional amendment, travels beyond the scope of Article 195 of the Constitution of India and therefore cannot be sustained in law.

2.4. He further submits that pension is intrinsically a post-retirement benefit ordinarily associated with cessation from service, whereas the office of a Member of the Legislative Assembly is a constitutional and political office to which the concept of retirement, in the strict service jurisprudence sense, is inapplicable. Learned counsel therefore contends that the respondents lacked constitutional authority to enact legislation providing pension to former Members of the Legislative Assembly.

2.5. Learned counsel further submitted that Entry 38 of List II of the Seventh Schedule only empowers the State Legislature to enact laws with respect to "salaries and allowances" of members of the Legislature and does not contemplate pensionary benefits. According to learned counsel, the legislative competence exercised by the respondents in the present case is therefore beyond the scope of the constitutional scheme.

2.6. Learned counsel also submitted that the Constitution consciously employs distinct expressions such as "salary", "allowances" and "pension", and wherever the framers of the Constitution intended to provide pensionary protection to constitutional functionaries, specific provisions in that regard were incorporated. It was contended that in the absence of such express constitutional recognition, the State Legislature could not have extended pensionary benefits to itself through ordinary legislation.

2.7. Learned counsel further argued that constitutional limitations cannot be expanded by legislative enactment in a manner that

enables elected representatives to confer additional financial benefits upon themselves beyond the constitutional framework.

2.8. Learned counsel further submits that the Members of Legislative Assembly are already entitled to substantial salaries, allowances and other emoluments under the prevailing statutory framework, and therefore, the extension of pensionary benefits and enhancement thereof on the basis of tenure raises a substantial constitutional issue requiring consideration by this Hon'ble Court.

2.9. In support of such submissions, learned counsel has relied upon the precedent law laid down by the Hon'ble Apex Court in ***Lok Prahari through its General Secretary S.N. Shukla & Anr. v. Union of India through its Secretary and Ors.*** reported in **(2018) 16 SCC 696**. The relevant excerpts therefrom, which are germane to the present controversy, are reproduced hereunder:

"12. Article 322 declares that the expenses of Public Service Commissions shall be charged on the Consolidated Fund of India and such expenses include "salaries, allowances and pensions" payable to or in respect of the members or staff of the Commission.

20. The submissions of the Appellants proceed on the wrong assumption that certain provisions of the Constitution mandate the payment of pension to persons who hold constitutional offices like the Judges of this Court. We have already examined the language of the relevant provisions of the Constitution. We are of the opinion that, on a true and proper construction of the text of those provisions, they do not mandate the payment of pension. They only protect the pension if payable under the relevant law applicable on the date of appointment of a person to any one of those offices by declaring that such a condition could not be altered to the detriment of a person subsequent to his appointment.

21. However, the constitutional obligation to pay pension to persons who hold such offices may arise by implication having regard to the overall scheme of the Constitution relevant to those offices. The need to secure the independence of the holders of those offices by assuring them that either the

legislature or the executive will not be able to deprive them of the financial resources necessary to keep them away from impecuniousness, irrespective of the fact that a decision taken by the incumbents of each of those offices in discharge of the official responsibilities is acceptable or not either to the legislature or the executive. We must hasten to add that we must not be understood to be making any final declaration of law in this regard."

3. *Per contra*, Mr. Rajendra Prasad, learned Senior Counsel and Advocate General, appearing on behalf of the respondent-State, assisted by Ms. Dhriti Laddha, submitted that the controversy involved in the present writ petition is no longer *res integra*, inasmuch as the Hon'ble Supreme Court in ***Lok Prahari (supra)*** has already considered and settled the issue relating to grant of pensionary benefits to legislators in the context of Members of Parliament, which, according to learned counsel, stands on a footing analogous to that of Members of the Legislative Assembly.

3.1. Learned Advocate General further submits that the grounds of challenge raised in the present proceedings are substantially similar to those considered and repelled by the Hon'ble Apex Court in the aforesaid judgment and, therefore, the issue stands concluded by binding precedent. It was submitted that no fresh adjudication on the same constitutional issue is warranted by this Hon'ble Court.

3.2. In support of his submissions, learned Advocate General has relied upon the judgment rendered by the Hon'ble Allahabad High Court in ***Uttar Pradesh Janhit Sagathan v. State of Uttar Pradesh & Ors. (Writ Petition No.225 of 1985)*** decided on September 19, 1989. The relevant and operative portion thereof reads as under:

"36. We may assume that the attributes of the Indian Republic are as stated by the learned counsel, but we fail to appreciate

how thereby the representatives of the people are debarred from framing laws for themselves which will ensure them some benefits which will be available to them when they cease to be members of legislature. Legislation is the exclusive right of the legislature. If a legislation is required for legislature, the same will have to be framed by the legislature itself. Under entries 38 and 39 of List II sitting members of the State legislature are entitled to frame laws for themselves which will govern them during their tenure of membership. We have held hereinabove that the term "State pension" in entry 42 covers pension to ex-legislators. Thus sitting legislators can frame such laws also which would govern them after they have ceased to be members of the legislature. Our attention has not been drawn to any authority or treatise on Socialism or democracy which debars ex-legislators from accepting benefits from the State for then past services nor which debars the legislature of a Socialist Democratic Republic from granting benefits, including pensionary benefits, to its ex-legislators. Accordingly we are unable to hold that the basic structure of the Constitution disables the State legislature from granting pension to its ex-members.

55. We have already held hereinabove that the State legislature was competent under Entry 42 of List II to enact the impugned law. Accordingly, the challenge based on colourable exercise of power must fail. The legislature of the State of Tamil Nadu has also provided for payment of pension to its ex-members and this provision was challenged by Miss Lily Thomas, an Advocate of the Supreme Court but the challenge failed (see AIR 1985 Mad 240 Lily Thomas v. State of Tamil Nadu, The initial challenge in this case was based on total lack of power to enact the law. This lack of power was pleaded with reference to Arts. 186 and 195 read with Entry 38 of List II of the Seventh Schedules which were silent as to pension for ex-members of the legislature. The Madras High Court negatived the challenge observing that the source of power was contained in Art. 42. An argument some what similar to that raised before us was raised before the Madras High Court also. It was contended that the members of the legislature were trustees of the public exchequer and in common law trustees were incompetent to provide for their own beneficial enjoyment of the trust fund during their short term as trustees and much more so, after the expiration of the trusteeship unless the deed of trust, namely, the Constitution, made provision therefor either expressly or by necessary implication. The payment of pension was described as an illegal and gratuitous cash dole without any consideration or quid pro quo which members of the legislature had voted as life long reward for themselves in abuse of their high constitutional powers. The submissions were negatived with the following observations continued in paragraph 14 of the report at page 246:—

"These submissions are high sounding and may look attractive if looked at besides the constitutional sphere. So far as this court is concerned, it shall confine its adjudication of the controversy raised before it over the legislative competency by the Yard-stick found in the

Constitution itself. If a power has been assumed, which has no foundation in the Constitution, that will be an incompetent power and the resultant statute would be struck down. But, if the power is available and could be spelt out under the Constitutional provisions, it is not possible for this court to bring in any other legal conceptions; or any ethical, social and political conceptions and strike down the legislation which is otherwise constitutionally valid."

56. We are in respectful agreement with the above view.

57. The above judgment was by a learned single Judge. There was an appeal before a Division Bench which also failed. The appellate judgment of the Division Bench is reported in AIR 1986 SC 290 *Miss Lily Thomas v. State of Tamil Nadu*."

3.3. Reliance has also been placed by the learned Advocate General upon the judgment rendered by the Hon'ble Gujarat High Court in ***Narayanlal Himatlal Bhatt & Ors. v. State of Gujarat (Special Civil Application No.1676 of 1986)*** decided on April 4, 1986, wherein the Hon'ble Court, while examining Article 246(3) read with Entry 42 of List II of the Seventh Schedule, held that the State Legislature possesses exclusive legislative competence with respect to "State pensions", including pension payable to former Members of the Legislative Assembly. The relevant portion reads as follows:

"3. We have carefully considered all these arguments advanced by the party-in-person. There is absolutely no difficulty in appreciating and reading the various provisions of the Constitution wherein they speak of salary and other conditions of service to various functionaries. As far as the members of the State Legislature are concerned, Article 194 deals with powers, privileges etc. of the Houses of Legislatures and of the members and committees thereof. Article 195 deals with salaries and allowances of members. The said Article reads as follows:

"195. Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding province."

4. No doubt this Article mentions only salaries and allowances and does not speak about pension. That does not mean that the Constitution prohibits payment of pension by appropriate enactment. It is too much to argue that there is an implied ouster of such privileges since this Article 195 speaks only of salaries and allowances without any reference to pension. According to the party-in-person, the payment of pension is detrimental to national interest and is an unauthorised drain of the consolidated funds of the State. When there is no constitutional prohibition for enacting such a law, the Legislature, in its wisdom, thought it fit to pay pension to the members who have served the State as the members of the Legislative Assembly. They have fixed up in the said Act the necessary criteria to receive the pension and such a decision is within the legislative competence of the State Legislature and cannot in any way be said either unconstitutional or against the Nation's interest. No doubt the words 'pension', 'allowance', 'privilege', 'salary', 'remuneration', and 'emoluments' have different connotations and are awarded in the context of such services rendered by the person concerned.

9. As we have stated in paragraph supra, we do not find any prohibition in the Articles referred above against enacting the Gujarat Legislative Assembly Members' Pension Act, 1984. It cannot also be said that there is implied ouster of enacting the law providing pension to the members of the Legislative Assembly from the words of Article 195 of the Constitution. Art. 246 of the Constitution clearly states as follows:

"246.(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated: in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Entry 42 of List II of the Seventh Schedule states:

"42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State."

10. Reading this Entry along with Article 246(3), it is clear that the State has exclusive power to make laws for such State or

any part there of with respect to the pension payable by the State or out of the Consolidated Fund of the State. Such provision for payment of pension will not in any way come into conflict with Article 195 of the Constitution, but, on the other hand, it will be only an additional benefit that is sought to be conferred upon the members of the Legislative Assembly to have served the State in that capacity.

11. Thus, from the foregoing discussion, we have absolutely no hesitation in coming to the conclusion that the Gujarat Legislative Assembly Members' Pension Act, 1984 is intra vires the Constitution and that the State Government has ample legislative competence to promulgate such a law. For all these reasons, the Special Civil Application is dismissed. Mr. M.C. Shah, the learned counsel for the petitioners, at this stage, orally applies for leave to appeal to Supreme Court. In our view, this is not a fit case for appeal to the Supreme Court as it does not involve substantial question of law which needs to be decided by the Supreme Court. Oral application for leave to appeal to Supreme Court is, therefore, rejected."

3.4. Learned Advocate General further relied upon the judgment rendered by the Hon'ble High Court of Madhya Pradesh in ***Purwa Jain v. Union of India (Writ Petition No.18527 of 2020)*** decided on 19th of July, 2022, wherein the constitutional validity of pensionary provisions applicable to Members of the Legislative Assembly was upheld. The Hon'ble Court held:

"07. So far as the constitutional validity of Section 6A(1) and (3) of the Adhiniyam of 1972 is concerned, the validity of entire Section 6A was challenged before this Court in the case of Raghu Thakur v/s The State of Madhya Pradesh reported in I.L.R. (1996) M.P. 334 and vide order dated 26.09.1996, this Court has dismissed the writ petition. The Division Bench has held that the Adhiniyam of 1972 is intra vires and it is within the competence of the State Legislature under Article 195 of the Constitution read with Entry 42 of List II of Seventh Schedule of the Constitution to legislate on a pension of members of Assembly. Therefore, the entire Section 6A(1) has been upheld by this Court. The petitioner being an advocate ought to have done homework before filing this petition challenging the constitutional validity of Section 6A(1).

08. So far as pension payable to the M.Ps. and M.L.As. is concerned, the same issue came up for consideration before the Apex Court in the case of Lok Prahari Through Its General Secretary S.N. Shukla & Another v/s Union of India Through Its Secretary & Others reported in (2018) 16 SCC 696. The Apex Court negated all the arguments which satisfy all the queries in the mind of the petitioner as raised by her by way of the present petition. Paragraphs 20, 21 & 26 of the aforesaid judgment are reproduced below:-

"20. The submissions of the Appellants proceed on the wrong assumption that certain provisions of the Constitution mandate the payment of pension to persons who hold constitutional offices like the Judges of this Court. We have already examined the language of the relevant provisions of the Constitution. We are of the opinion that, on a true and proper construction of the text of those provisions, they do not mandate the payment of pension. They only protect the pension if payable under the relevant law applicable on the date of appointment of a person to any one of those offices by declaring that such a condition could not be altered to the detriment of a person subsequent to his appointment.

21. However, the constitutional obligation to pay pension to persons who hold such offices may arise by implication having regard to the overall scheme of the Constitution relevant to those offices. The need to secure the independence of the holders of those offices by assuring them that either the legislature or the executive will not be able to deprive them of the financial resources necessary to keep them away from impecuniousness, irrespective of the fact that a decision taken by the incumbents of each of those offices in discharge of the official responsibilities is acceptable or not either to the legislature or the executive. We must hasten to add that we must not be understood to be making any final declaration of law in this regard.

26. Another argument advanced by the Appellants is that pension is payable to an employee of State after his superannuation. Since MPs are not employees of State, they are not entitled for pension nor the Parliament is competent to provide payment of pension to the ex-MPs. In our opinion, there is a fallacy in the above submission, insofar as it assures that pension is only payable to former employees of State and nobody else. Such a submission emanates from the fact that certain payments made to the former employees of State are called pensions and the misconception of the Appellants that the expression 'pension' can only have one meaning. There are various other categories of payments made by State which are called 'pensions', such as, Old Age Pension, Widow Pension, and Disability Pension etc."

09. In the case of Ashwini Kumar Upadhyay v/s Union of India & Another reported in (2019) 11 SCC 683, the Apex Court has held that the mere fact that M.P. / M.L.A. draws salary under the Act of 1954 and different allowances under different Rules framed under the said Act does not result in the creation of a relationship of employer and employee between Government and the Legislature despite the description of payment received by them in the name of salary. Even the expansive definition of the term pension in the General Clause of 1897 will be of no away, therefore, the contention of the petitioner is baseless that there should be a minimum eligibility period for grant of pension to the M.Ps. and M.L.As. as provided for pension rules applicable to the Government employees / public servants. Hence, entire Public

Interest Litigation is devoid of substance and filed without proper research."

3.5. Learned Advocate General therefore submitted that the impugned enactment is fully traceable to the legislative competence of the State Legislature under Article 246(3) read with Entry 42 of List II of the Seventh Schedule to the Constitution of India and does not suffer from any constitutional infirmity warranting interference by this Hon'ble Court under Article 226 of the Constitution of India.

4. Heard learned counsel for the respective parties at length and perused the material available on record, alongwith the judgments cited at the Bar.

5. The principal challenge raised in the present writ petition pertains to the constitutional validity of the provisions granting pensionary benefits to former Members of the Legislative Assembly under the Rajasthan Legislative Assembly (Officers and Members Salary, Emoluments and Pension) Act, 1956. The challenge primarily rests upon the interpretation of Article 195 of the Constitution of India, Article 366(17), and Entry 38 of List II of the Seventh Schedule.

6. The case of the petitioner, in essence, is that Article 195 of the Constitution contemplates only "salaries and allowances" payable to Members of the Legislative Assembly and, therefore, in the absence of an express constitutional provision authorizing payment of pension, the State Legislature lacked competence to enact the impugned provisions. The petitioner has further sought to contend that pension, being a constitutionally distinct concept separately defined under Article 366(17) of the Constitution of

India, could not have been legislatively extended to former Members of the Legislative Assembly without a constitutional amendment. This Hon'ble Court is unable to accept the aforesaid contention.

7. At the outset, this Court finds that the controversy involved in the present writ petition is no longer *res integra* and stands substantially covered by the judgment rendered by the Hon'ble Supreme Court in ***Lok Prahari (supra)***, wherein a similar challenge relating to pensionary benefits payable to Members of Parliament came to be considered and rejected.

7.1. The Hon'ble Apex Court, while examining the constitutional scheme governing pensionary benefits to legislators and constitutional functionaries, observed that the Constitution does not mandate payment of pension merely because certain constitutional provisions contain references thereto, and clarified that such provisions principally operate to protect pensionary conditions wherever pension is otherwise payable under law. The Hon'ble Supreme Court further rejected the contention that pension can be granted only to government servants upon superannuation and held that the concept of pension is not confined to a traditional employer-employee relationship, taking note of various categories of pensions recognized in law which are independent of conventional government service.

8. This Court has also taken note of the precedents relied upon by learned Advocate General, which consistently affirm the legal position that matters not expressly prohibited by the Constitution, and consciously left open by the framers of the Constitution for

legislative determination by the State or Parliament, fall within the legislative domain so long as the enactment remains within constitutional limits. Once the issue stands settled by the Hon'ble Supreme Court, the same cannot be reopened merely on the basis of a different interpretation sought to be advanced before this Court.

9. This Court is further of the considered opinion that the binding judgment rendered by the Hon'ble Supreme Court in ***Lok Prahari (supra)***, though rendered in the context of Members of Parliament, squarely addresses the principal issues raised in the present writ petition. The Hon'ble Apex Court, after an elaborate examination of the constitutional scheme, held that the absence of an express constitutional provision providing pension to legislators does not, by itself, denude the competent Legislature of its authority to enact such a law.

10. This Court also finds that the constitutional framework governing Members of Parliament and Members of the Legislative Assembly, insofar as salaries, allowances and pensionary benefits are concerned, stands on substantially similar footing. Once the competence of Parliament to enact laws providing pensionary benefits to Members of Parliament has been recognized, and the State Legislature derives legislative competence in relation to "State pensions" under Entry 42 of List II read with Article 246(3) of the Constitution of India, the challenge raised to the impugned enactment cannot be sustained merely on the ground that Article 195 expressly refers only to "salaries and allowances".

11. The contention advanced on behalf of the petitioner essentially seeks to read into the Constitution an implied prohibition against grant of pensionary benefits to former legislators. Such a prohibition, however, cannot be inferred in the absence of any express constitutional limitation, particularly when the Constitution itself recognizes "State pensions" as a distinct legislative field under Entry 42 of List II of the Seventh Schedule.

12. This Court is also conscious of the settled principle that matters of legislative policy fall within the domain of the Legislature. The scope of judicial review in such matters is limited to examining legislative competence and constitutional validity. Once an enactment is found to be within the constitutional framework, interference by this Court would not be warranted.

13. In view of the aforesaid discussion and the settled legal position governing the field, this Court is of the considered opinion that the petitioner has failed to make out any ground warranting interference in exercise of jurisdiction under Article 226 of the Constitution of India.

14. Consequently, the present writ petition, being devoid of merit, is hereby dismissed.

15. All pending application(s), if any, also stand dismissed.

(VINIT KUMAR MATHUR),J

(DR. PUSHPENDRA SINGH BHATI),J