
(2006) 03 DEL CK 0202
In the Delhi High Court
Case No : WP (C) 3320 of 2006

Bishwajit Bhattacharya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Constitution of India, 1950 — Article 124(3), 14
High Court and Supreme Court Judges (Salaries and Conditions of Service)
(Amendment) Act, 2005 — Section 7

Citation : (2006) 130 DLT 456

Hon'ble Judges : Markandeya Katju, C.J.; S.N. Dhingra, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Anil Nag, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—Heard the petitioner in person.

2. The prayer in the writ petition is that a period of 10 years should be added to the service of the Judges of the High Court for the purpose of pension as has been done for Judges of the Supreme Court appointed under Article 124(3)(b). We are afraid, we cannot make any such direction. There is a broad separation of powers under the Constitution and it is ordinarily impermissible for Judges to encroach into the legislative or executive domain. Judges must exercise restraint in this connection, and not do legislation, vide *Union of India and another Vs. Deoki Nandan Aggarwal*, in which the Supreme Court observed (vide para 14):-

It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or

make up the deficiency. Courts shall decide what the law is and not what it should be.

3. In *State of Jharkhand v. Govind Singh* it has been held that :-

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain*). The legislative *casus omissus* cannot be supplied by judicial interpretative process.

4. The similar view has been taken in *Vemareddy Kumaraswamy Reddy and Anr. v. State of A.P.* JT 2002 (2) 6 that:-

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Commissioner of Sales Tax, Madhya Pradesh Vs. M/s. Popular Trading Company, Ujjain*, The legislative *casus omissus* cannot be supplied by judicial interpretative process. (See *Maulavi Hussein Haji Abraham Umarji Vs. State of Gujarat and Another*, , and *State of Jharkhand v. Govind Singh*

5. In *Union of India (UOI) Vs. Prakash P. Hinduja and Another*, , the Supreme Court observed that:-

Under our constitutional scheme the Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, it has been held that no Court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority. This view has been reiterated in *State of Jammu and Kashmir Vs. A.R. Zakki and others*, . In *A.K. Roy and Others Vs. Union of India (UOI) and Others*, it was held that no mandamus can be issued to enforce an Act which has been passed by the Legislature.

6. The petitioner submitted that there is discrimination between the retired Supreme Court Judges and the retired High Court Judges, since the retired Supreme Court Judges who had been appointed under Article 124(3)(b) are given the benefit of including 10 years to their service as a Supreme Court Judge vide Section 7 of the High Court and Supreme Court Judges (salaries and conditions of service) Amendment Act 2005, but retired High Court Judges are not given this benefit.

7. In our opinion, Article 14 has no application in such a case as the Supreme Court Judges and the High Court Judges form two distinct classes.

8. There is no force in this petition and hence it is dismissed.